The Solicitors' Journal

Vol. 103 No. 21 [pp. 395-416] MAY 22, 1959 [One shilling and ninepence

MAY 22, 1959

THE

SOLICITORS' JOURNAL

VOLUME 103
NUMBER 21

CURRENT TOPICS

The Waters Case

As is their custom, the Lords have said everything which remained to be said about the Waters Tribunal, which was discussed in these columns by a Scottish correspondent last week (p. 377, *ante*). It is now generally accepted that the case must not be regarded as a precedent and that the circumstances were wholly exceptional. In the atmosphere of public disquiet which preceded the establishment of the tribunal, it was tempting for the Government to yield as they did. With all the wisdom which comes from hindsight, we think that they would have been better advised to leave the boy and his father to pursue their civil remedy; we say this in due humility since we were in favour of a tribunal. We share the general disquiet and dissatisfaction with the machinery provided by the Tribunals of Inquiry (Evidence) Act, 1921, but we are less sure when we turn to conceiving a practicable alternative. We have no doubt that there must be some means of dealing with situations, such as those for which tribunals have been set up in the past, for which the ordinary processes of law provide no remedy.. Although there may well be some changes in detail which may be desirable, we believe that we must continue to trust the political judgment of the Government in deciding when to use this dangerous, expensive and often inaccurate constitutional weapon.

Criminal Investigation

It is well known that fewer criminals would be convicted if it were not for the statements that they make, with or without caution, to the police. It would be a miscarriage of justice if an admission or a confession made to the police could not be given in evidence to prove the guilt of the accused. It would equally be a miscarriage of justice to admit admissions and confessions obtained by threats or inducements. Although we pride ourselves on observing the principle that in this country no man is bound to convict himself out of his own mouth, not so much because of any false sympathy for the guilty but because of fears that the innocent may be wrongfully trapped, it sometimes happens that the police are able to secure from the accused himself the evidence they need for a conviction long before they are required by the Judges' Rules to administer a caution. Indeed, it often happens that the necessity for a caution only arises at the point when the inquiries of the police are no longer in danger of being hampered by giving it. There is some public disquiet on the subject. Several Members of the House of Commons have put their names to a motion asking that no alleged confession of anyone charged with a criminal offence shall be admissible

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in evidence in any court unless made in the presence of a magistrate. *Justice*—the British section of the International Commission of Jurists—have appointed a committee under the chairmanship of Mr. F. H. LAWTON, Q.C., to consider the law and practice of the examination of persons charged with criminal offences with reference to the examination by police and committing magistrates, the taking and admissibility of confessions, and the desirability of making the defendant give early notice of the main lines of his defence. In the last particular the aims of *Justice* go beyond the House of Commons' motion. As a corollary of the principle that no man should be bound to convict himself out of his own mouth, in this country we accept the principle that no man is bound to say anything in answer to a charge or to give evidence on his own behalf, either at the preliminary examination or at his trial. Nevertheless, there are judicial *dicta* indicating that it may be proper for a judge in his summing-up to comment on the fact that an alibi was not disclosed before the trial, thus giving the prosecution no opportunity of testing it. We have some sympathy with the idea that the defence should be bound to give prior notice of certain lines of defence, particularly an alibi, although we would resist anything in the nature of formal pleadings. What is wrong is that there should be no clear law on the subject. So long as the caution exists in its present form, the complete silence of the prisoner should not be adversely commented on in any way.

Charitable Trusts

WE welcome the news that in all probability a Bill dealing with the law of charity will be introduced during Parliament's next session. This was announced during the recent debate initiated in the Lords by LORD NATHAN, who was Chairman of the Committee on the Law and Practice of Charitable Trusts, whose report was published in 1952. Of greatest interest, perhaps, is the promised extension of the range of trustee investments generally instead of investments by charity trustees alone. The LORD CHANCELLOR in the same debate, on 13th May, forecast a public announcement on this subject in the near future. Provision should be made for periodical revision of the list of authorised investments; future detailed alterations could well be made by statutory instrument. Greater flexibility in this field may well reduce applications to the court under the Variation of Trusts Act, 1958.

Non-Suit

WE agree with WILLMER, L.J., giving judgment in the Court of Appeal in *Clack* v. *Arthur's Engineering, Ltd.* (*The Times*, 12th May), when he said that consideration might well be given to the desirability of abolishing the power to non-suit in the county court, as it has been in the High Court. Now that no one need lose his case by reason of technicalities of pleading, there seems no need to clutter up the County Court Rules with a remedy which is archaic. We can confirm Willmer, L.J.'s tactful doubt whether practitioners to-day fully understand the remedy of non-suit, and it is not one of those things which, if it did not exist, would have to be invented. We have referred in the past to legal jumble which would be cleared out of the cupboard if it were not for a lurking suspicion that in some extraordinary circumstance, which would arise only a week after it had been despatched, it would suddenly be found to be necessary. It is difficult to visualise why the remedy of non-suit is necessary.

Penalty Not Recoverable

A CONTRACT may stipulate that, in the event of a breach of one of its provisions, a certain sum shall be payable by way of damages, but this sum will not be recoverable if it is shown that it is really a penalty and not a genuine pre-estimate of damage. In *Arlesheim, Ltd.* v. *Werner* [1958] S.A.S.R. 136, this principle was applied to a term of a contract of service. The defendant was employed as a ladies' hairdresser in the service of the plaintiff company. The agreement provided that the employee should give the employer six calendar months' notice in writing if she wished to determine the contract of employment and that, if the employee should leave the employment without giving six months' notice, "the employee will pay to the company for such breach of contract the sum of £56 10s. as liquidated and ascertained damages; and it is expressly agreed that the said sum . . . has been arrived at as the result of a careful consideration of the losses damages and expenses likely to be occasioned to the company as the result of such breach of contract." The defendant left the employment of the plaintiff company without giving notice and the question arose, *inter alia*, as to whether the sum of £56 10s. was recoverable. The Supreme Court of South Australia decided that it was not, as the sum stipulated in the agreement was a penalty and not liquidated damages. NAPIER, C.J., applied the test suggested by Lord Dunedin in *Dunlop Pneumatic Tyre Co., Ltd.* v. *New Garage and Motor Co., Ltd.* [1915] A.C. 79 and, on the evidence, notwithstanding the wording of the relevant clause, he felt constrained to hold that, so far as the defendant was concerned, there was no real consent to a genuine pre-estimate of the damages. In his lordship's view, it was "extravagant and unconscionable" that the agreement should provide for the payment of £56 10s. if the defendant left her employer one week before her six months' notice had expired.

Piracy on the Serpentine?

A GIRL has alleged that two youths in a boat rammed a skiff which she hired at the Serpentine, in Hyde Park, and seized her handbag. It has been suggested that this incident may lead to the courts of this country being confronted with another prosecution for piracy, but it seems to us that this is very unlikely. The crime of piracy has never been authoritatively and satisfactorily defined, but in *R.* v. *Dawson* (1696), 13 State Trials 454, Holt, C.J., agreed that "piracy is only a sea term for robbery, piracy being a robbery within the jurisdiction of the Admiralty" and in *Republic of Bolivia* v. *Mutual Indemnity Marine Insurance Co.* [1909] 1 K.B. 785 the Court of Appeal found that there must be robbery "in places beyond the jurisdiction of a State" that is, not, as in that case, upon a tributary of a tributary of the Amazon. It can be said, therefore, that whether it is a case of piracy *jure gentium* or piracy by statute, the events in question must have occurred within the jurisdiction of the Court of Admiralty or "on the high seas," an expression used in s. 1 of the Piracy Act, 1721. Coke took the view that the jurisdiction of the Court of Admiralty and the term the "high seas" does not include "creeks and arms of the sea within the body of a county" and the Bristol Channel (*R.* v. *Cunningham* (1859), 28 L.J.M.C. 66), Milford Haven (*R.* v. *Bruce* (1812), 2 Leach 1093) and Roundstone Bay, Galway (*R.* v. *Mannion* (1846), 2 Cox 158), have been held to be such "creeks and arms." In view of this, we find it difficult to believe that the offence of piracy may be committed on the Serpentine.

VALUATION OF CONTINUING ANNUITIES FOR ESTATE DUTY PURPOSES

THE decision of the Court of Appeal in *Re Tapp* [1959] 2 W.L.R. 541; p. 311, *ante* is of distinct interest concerning the incidence of estate duty in respect of annuities. At first sight it might appear that the court has not established anything beyond the immediate application of the decision in *Re Cassel, Public Trustee* v. *Mountbatten* [1927] 2 Ch. 275, and *Re Norfolk (Duke of), Public Trustee* v. *Inland Revenue Commissioners* [1950] Ch. 467, and has merely confirmed the decisions in those cases, decisions thought to be somewhat in doubt as a result of recent cases. The true position is that, while the court in *Re Tapp* has not decided any new principle apart from *Re Cassel* and *Re Norfolk*, it has illustrated that the common principle applicable to the three cases can embrace circumstances not heretofore fully adverted to.

Method of valuation

The matter at issue in the earlier cases and in *Re Tapp* was whether an annuity should be valued on death under s. 2 (1) (*b*) and s. 7 (7) (*b*) of the Finance Act, 1894, on the slice, or portion, of the actual capital necessary to produce the annual payment, bearing the same proportion to the whole of the capital as the annual payment has to the income, or whether it should be valued according to actuarial principles. The latter method, of course, is much more favourable to the taxpayer. In all three cases it was decided that the proper method of valuation was the actuarial basis, i.e., the value of the income set free by the death computed by reference to the period, life or otherwise, for which it is to be enjoyed by some person or interest, or, in other words, the value of the benefit of the annual sum.

Passing of annual sum

In order to appreciate the effect of the decision in *Re Tapp* it is necessary first to refer to the circumstances in *Re Cassel* and *Re Norfolk*.

The circumstances in *Re Cassel* were that a testator bequeathed leasehold premises to his trustees to allow *C* the use and enjoyment thereof during her life and, after her death, so to allow the use and enjoyment to *M* and further directed that, during the two life periods, the outgoings in respect of the premises should be borne by his residuary estate. The average annual amount of the outgoings was £5,000 a year and, on the death of *C*, the summons asked as to how the duty in respect of this sum should be borne as between *M* and the residue. It was directed that *M*, as the person to whom the property passed, was to bear the duty, but upon equitable terms. The duty, therefore, was to be paid by the residue and *M* was to effect a policy on her life and transfer it to the trustees who were to pay the premiums and the interest on the duty out of the annual sum of £5,000. It was held, in the first place, that what passed on *C's* death (and passed under s. 1 of the Finance Act, 1894; see *Cowley (Earl of)* v. *Inland Revenue Commissioners* [1899] A.C. 198), was the benefit of the annual sum payable under the relevant clause in the will of the testator, and then, that the hypothetical market price thereof could be found by ascertaining the value of the annual sum for the unexpired period of the clause in the will.

The position in the *Norfolk* case was that a testator by his will devised his freehold hereditaments to his trustees for 1,000 years and, by the trusts declared by him in respect thereof, the trustees were, out of the rents and profits, to pay any annuity directed by him. By a codicil to his will, the testator gave an annuity of £2,000 to his trustees during the joint lives of his brother *E* and *E's* son *H*, and for the life of the survivor of them, to be paid to *E* during his life, and after his death, to *H*. Upon the death of *E* the Commissioners, in an amended notice of appeal, claimed duty on the slice, or notional portion, of the capital producing the annuity under s. 1 of the Finance Act, 1894, or on the same portion under s. 2 (1) (*b*) of the Act. The claim under s. 1 was admitted to be a departure from previous practice when the slice valuation was only claimed in respect of property passing under s. 2 (1) (*b*). It was held: (i) that the annuity itself (as did the annual sum in *Re Cassel*) passed under s. 1 of the 1894 Act; (ii) that duty was not payable on the notional portion producing the annuity computed under s. 7 (7) (*b*) of that Act on property passing under s. 1, but only on property deemed to pass under s. 2 (1) (*b*) thereof; (iii) that the property would pass under s. 2 (1) (*b*) on the death of *H*, being the last annuitant; (iv) that, on the death of *E*, duty was payable on the actuarial value of the annuity for the life of *H*.

The principle, therefore, is that where a continuing annuity passes on death, it so passes under s. 1 of the 1894 Act (which excludes any application of the slice valuation), and that it is to be valued for estate duty purposes upon actuarial principles.

Contemporaneous annuitants

The significance of the decision in the *Tapp* case is that it shows that a continuing annuity can pass under s. 1 of the 1894 Act (and therefore be valued on the favourable actuarial basis) in circumstances other than those in which the benefit of the annuity passes from one person to another upon a death, or where there is a direction to pay the same annuity to one person and on his death to another, and that the existence of contemporaneous annuitants (even if non-discretionary), in the annuity, does not vitiate the position. The circumstances in the *Tapp* case were that the testator bequeathed "the sum of £3,000 *per annum* to my sister Catherine Alway, my nephew Arthur Gerard Sentance Tapp and my niece Phyllis Fawell or such one or more of them as shall for the time being be living and if more than one of them shall be living to be received by them in equal shares." The testator died in 1936, the sister in 1937, and the nephew in 1956. The case was in connection with the nephew's death.

The Crown, on appeal from a judgment of Mr. Justice Danckwerts, claimed that on the death of the nephew there was a passing of the property under s. 2 (1) (*b*) of the 1894 Act, to be valued in accordance with s. 7 (7) (*b*) of that Act on the slice principle (this claim not having been made on the death of the sister, duty being claimed on the actuarial basis), but the Court of Appeal held that there was an actual passing of the share of the annuity under s. 1, with the consequence that the valuation of the nephew's share of the annuity was on an actuarial basis.

The reason for the decision was that the court regarded the annuity as a single continuing annuity in no way different from that in *Re Norfolk*. The trust was to make a continuous annual payment of £3,000 out of the income to the three

beneficiaries or to such of them as should be living, during one entire period, which was until the death of the survivor. On the basis of the decision in *Re Cowley* with regard to the operation of ss. 1 and 2 of the 1894 Act (i.e., that s. 2 of the Act does not deal with property which actually passes on death, such as absolute property, or property subject to a life interest, or a continuing annuity, which come within s. 1, but merely sweeps in certain items not covered by that section), there was a passing of the share of the annuity within s. 1, a matter which could not be contended otherwise, consistently with *Re Norfolk* and *Re Cassel*.

The judgment of the court was delivered by Jenkins, L.J., who had delivered a judgment in the *Norfolk* case in which he explained the meaning of an annuity and stated that it was not equivalent to a share of the capital equal to its yearly amount, but merely the right to receive the yearly amount out of the property upon which it was charged. These views were also expressed by Romer, L.J., in *Re Lambton's Marriage Settlement; May* v. *Inland Revenue Commissioners* [1952] Ch. 752. In such cases there would be an actual passing of the annuity under s. 1. It is also necessary to distinguish between an annuity and an interest in the share of income of property. From the estate duty point of view, there is no difference between such cases and those concerning a share in the capital: *Re Norfolk, supra; Re Northcliffe* [1929] 1 Ch. 327; *Christie* v. *Lord Advocate* [1936] A.C. 569. In order, therefore, to benefit from the more favourable actuarial valuation it is necessary to ensure that the annual payment is a true annuity and not an interest in capital or an interest in the income of capital.

GEORGE C. MASON.

CHILDREN UNDER THE CRIMINAL LAW

AGE is an important factor at all stages in the administration of the law, and must be taken into account to secure justice. But whereas the civil law only distinguishes between minority and majority—that is, when it makes any definite distinction at all—the penal law recognises several differences in age, and the subject falls to be considered from four angles: the offender, the victim of the offence, procedure and punishment.

The age of innocence

In the criminal jurisdiction, where *mens rea* is an essential ingredient, discretion and understanding occupy a special place and perform an indispensable function. Nevertheless, obedience to the criminal law begins at the tender age of eight years, although no one is fully responsible until he attains the age of fourteen. Thus, there is an absolute presumption that no child under the former age can be guilty of any offence (Children and Young Persons Act, 1933, s. 50), and a rebuttable presumption that between these two ages he is incapable of criminal intent. Naturally, as the child grows so the presumption weakens; but as early as 130 years ago it was decided that to displace it the prosecution must prove that the child had guilty knowledge that he was doing wrong (*R.* v. *Owen* (1830), 4 Car. & P. 236). This can be inferred from facts which indicate beyond all doubt and contest that the child possesses mischievous discretion and sufficient understanding (*R.* v. *Gorrie* (1919), 83 J.P. 136). In the circumstances, the case *Ex parte N., The Times*, 21st March, 1959, is of interest. There, a child of twelve was convicted of stealing by the Appeals Committee of Middlesex Quarter Sessions, and the Divisional Court ordered the chairman and justices of the Appeals Committee to state a case. The Divisional Court refused a mandamus (*The Times*, 8th May, 1959).

However, since a child under eight is incapable of crime, the goods which he dishonestly misappropriates are not stolen, and the adult who receives them with the full knowledge of the circumstances cannot be found guilty of receiving (*Walters* v. *Lunt* [1951] 2 All E.R. 645). Moreover, if a child under the age of discretion is employed in the commission of crime, then the law of innocent agency automatically applies. Thus, if an adult breaks a house-window by night and puts through it a child aged seven, who takes goods out of the house and delivers them to him, this is burglary in the adult (1 Hale 555) for the same reason that it would be murder in him if he deliberately contrived that a person of mature age administer a fatal dose of poison who was ignorant of its deleterious nature (Fost. 349). That is why on the trial of an adult who had induced a nine-year-old child to take money from his father's till and give it to him, the jury were directed to consider whether the child knew that he was doing wrong or was merely doing what he was asked to do without being conscious of any guilt on his part (*R.* v. *Manley* (1844), 1 Cox 104).

Now, although the presumption of the absence in a child of criminal intent is rebuttable between the ages of eight and fourteen, the law presumes conclusively that a male under the latter age is unable to commit rape or an assault to commit rape—notwithstanding (*a*) that he has reached full puberty and may be physically capable of sexual intercourse, and (*b*) that he may possess mischievous discretion (*R.* v. *Phillips* (1839), 8 Car. & P. 736). In fact, provided he has the latter, then on evidence which would warrant the conviction of an adult of rape, a child may be convicted of indecent assault or common assault—*sed quaere* whether he may be convicted of an attempt to commit rape (*R.* v. *Williams* [1893], 1 Q.B. 320). Similarly, a male under fourteen cannot be found guilty of sodomy either as an active agent or a passive party, but the adult involved with him is guilty when he permits as well as when he acts (*R.* v. *Allen* (1848), 1 Den. 364). Yet, since the immunity is based solely on the supposition of impotence, a boy under fourteen years old who is possessed of mischievous discretion—no less than a woman—may be indicted of aiding and abetting the commission of rape, because what is relevant here is mental capacity and not sexual potency (*R.* v. *Eldershaw* (1828), 3 Car. & P. 366). Finally, and on a similar principle, although a minor may not be liable under contract, infancy is no defence to a charge of larceny as a bailee, because bailment may exist independently of contract (*R.* v. *McDonald* (1885), 15 Q.B.D. 323). Yet in at least one case the criminal law extends its protection to males who have reached their majority, that is, where a man under the age of twenty-four is charged with having unlawful sexual intercourse with a girl not under the age of thirteen but under the age of sixteen, and he has not been previously charged with a like offence—then the presence of a reasonable cause for his belief that the girl was over the age of sixteen affords him a valid defence (Sexual Offences Act, 1956, s. 6 (3)).

Protection of children

Children are helpless creatures that have to be constantly assisted in every way if they are to survive, and the criminal law surrounds them with various protective measures from conception onwards for two reasons: one emotional, because naturally strangers as well as relations cannot be indifferent to their lot; the other rational, because the children of to-day are the men and women of to-morrow, and the way they are brought up will mould the shape of the next generation or two. Indeed, many of these measures have been devised to deter parents and guardians from abusing their trust for selfish ends and thus jeopardising the future of the race.

Accordingly, the use of drugs or instruments to procure abortion is prohibited (Offences against the Person Act, 1861, s. 58; *R.* v. *West* (1848), 2 Car. & K. 784); and if the child is born alive and then dies as a result of the ante-natal administration of a drug or the bruises it received in the womb from an instrument or a blow, it may be murder in the person responsible for the act (3 Co. Inst. 50, but see 1 Hale 433; *R.* v. *Senior* (1832), 1 Mood. 346). Furthermore, it is a felony—namely, child destruction—to commit any wilful act with a view to ending the life of a child capable of being born alive, before it has acquired an existence independent of its mother (Infant Life (Preservation) Act, 1929, s. 1). So much is a child within its mother's womb a potential " person," that he who solicited a pregnant woman to murder her child at birth—and the child was born alive—was held guilty of soliciting to murder a " person " within the meaning of s. 4 of the Offences against the Person Act, 1861. And it may amount to murder (*a*) if a woman either *before* or after the birth of her child decides that it shall die and, accordingly, after its live birth leaves it to die and it does consequently die; or (*b*) if without such intent she determines to conceal the birth of her child by dangerous methods which end in its death (*R.* v. *Handley* (1874), 13 Cox 79). Of course, the woman who abandoned her newly born child in the open, covered merely with leaves, and it was there killed by a bird of prey, was convicted of murder; and so was the one who placed the child in a hog-sty where it was eaten (1 East P.C. 226).

Parents and other persons who have custody of children assume a grave responsibility, failure in which may bring them to account before the criminal courts under one provision or another. Thus the mere abandoning or exposing—let alone ill-treatment or neglect—of a child under sixteen by a person over that age, in a manner likely to cause suffering or injury to health, is an offence under s. 1 of the Children and Young Persons Act, 1933; and the abandoning or exposing of a child under two years old whereby his life or his health is endangered is indictable under s. 27 of the Offences against the Person Act, 1861. And the decision in *R.* v. *White* (1871), 12 Cox 83, shows how strictly the law is applied. Similarly, failure to provide children with nourishment and shelter is an offence, and the excuse of poverty—which was a valid defence at common law (*R.* v. *Saunders* (1836), 7 Car. & P. 277; *R.* v. *Jones* (1901), 19 Cox 678)—no longer avails, in view of the assistance afforded nowadays by various voluntary institutions as well as national and local authorities (Children and Young Persons Act, 1933, s. 1; *R.* v. *Mabbett* (1851), 5 Cox 339). Young apprentices unable to fend for themselves are equally shielded by both common law and statute (Conspiracy and Protection of Property Act, 1875, s. 26; *R.* v. *Friend* (1802), R. & R. 20). Denial of medical aid to children is treated on the same footing and dealt with by the same section as the denial of food and shelter; so that a mother, who purposely neglected to procure a midwife for her unmarried daughter aged eighteen when she was taken in labour, was tried for murder (*R.* v. *Shepherd* (1862), 9 Cox 123), as was a woman who undertook to look after an infant of tender years and persistently withheld sufficient food until it died of starvation (*R.* v. *Bubb* (1850), 4 Cox 455).

Although a person who assaults a child in his or her custody commits an offence under the first section of the Children and Young Persons Act, 1933, the same section preserves to parents, teachers and other persons in charge of children the right to punish them. But the exercise of that ancient right has been regulated by the common law, which lays down that punishment may be inflicted solely with the object of correction and not out of vindictiveness. Moreover, the chastisement must be reasonable, administered carefully, in a moderate manner and with a moderate weapon. Thus where an angry mother chased a child and—merely to frighten him—threw a poker after him, which killed another child, she was convicted of manslaughter because she had adopted an improper mode of correction (*R.* v. *Conner* (1835), 7 Car. & P. 438). Besides, the child must be capable of appreciating correction and not an infant, say, of two or three (*R.* v. *Griffin* (1869), 11 Cox 402). But the parent is equally entitled to defend the child against others, in the exercise of his own right of self-defence, by virtue of the natural relationship of parent and child (1 Hale 484; 4 Bl. Com. 186; *R.* v. *Rose* (1884), 15 Cox 540).

Finally, a determined attempt has been made to protect children mentally, morally and psychologically by the Children and Young Persons (Harmful Publications) Act, 1955, which is directed mainly against horror comics and affects works likely to fall into children's hands and tending to corrupt children and young persons.

Legal custody

The common-law right of the father to retain custody of his child during his or her minority or until marriage, if the child marries while a minor—a right maintained for the child's own benefit—is protected by several provisions. For example, it is a felony by force or fraud unlawfully to take away or detain a child under the age of fourteen years with intent to deprive a parent or other person in charge of such child of the possession thereof (Offences against the Person Act, 1861, s. 56). The intent need not be to deprive the guardian permanently of the child under his care (*R.* v. *Powell* (1915), 24 Cox 229), while the force or fraud by means of which the child is taken away or detained may be exercised on the child, the guardian or some other person (*R.* v. *Bellis* (1893), 62 L.J.M.C. 155). A proviso to the said section, however, states that the child's mother, the man who claims to be the putative father, and any person who claims the right to the possession of the child are not liable to be prosecuted under it. Again, it is a misdemeanour unlawfully to take an unmarried girl under sixteen out of the possession and against the will of her parent or of any other person having charge of her (Offences against the Person Act, 1861, s. 55)—and the taking here need not be either by force or by fraud, while the girl's consent is as irrelevant as the defendant's high motive or ignorance that she was under sixteen (*R.* v. *Booth* (1872), 12 Cox 231). Nevertheless, there is no abduction where the girl goes to the defendant of her own accord without any persuasion on his part (*R.* v. *Kauffman* (1904), 68 J.P. 189), any more than where he honestly believes that he had a right to the custody of the child—although he had no such right (*R.* v.

Tinkler (1859), 1 F. & F. 513). Besides, where the girl's mother allowed her to indulge in a lax way of life—not objecting to her going out alone at night and dancing at public houses—it was held that the taking could not be said to have occurred against her mother's will, although she had gone away with the accused to London and stayed there for a couple of days without her mother's knowledge (*R.* v. *Primel* (1858), 1 F. & F. 50). In a somewhat different category is the provision that no person under eighteen years of age may be sent abroad for singing, playing, performing or being exhibited—for profit—unless he has attained the age of fourteen years and a police magistrate has granted a licence in respect of him (Children and Young Persons Act, 1933, s. 25).

Sexual offences

Lastly, the law protects certain minors in matters relating to sex. For instance, it is a misdemeanour to take an unmarried girl under the age of eighteen years out of the possession and against the will of her parent or any other person having lawful charge of her, with intent that she should have unlawful sexual intercourse with any man (Sexual Offences Act, 1956, s. 19). Yet here reasonable cause to believe that she was eighteen is a valid defence, though the defendant did not inquire till after the taking (*R.* v. *Packer* (1886), 16 Cox 57). Furthermore, to have unlawful sexual intercourse with a girl under the age of thirteen is a felony, and a misdemeanour with a girl between the ages of thirteen and sixteen (Sexual Offences Act, 1956, ss. 5 and 6, respectively). Consent is no defence to either charge, and in the absence of consent the offence amounts to rape (*R.* v. *Dicken* (1877), 14 Cox 8; *R.* v. *Ratcliffe* (1882), 10 Q.B.D. 74; *R.* v. *Harling* (1937), 26 Cr. App. R. 127). Except as aforesaid, a reasonable and *bona fide* belief that the girl concerned was of or over the age of sixteen affords no defence. It is important to note that when a girl consents she does not commit an offence or become the male's accomplice, because "the Act was passed for the purpose of protecting women and girls against themselves" (*R.* v. *Tyrrell* [1894], 1 Q.B. 710). However—notwithstanding the Age of Marriage Act, 1929, s. 1, and the Marriage Act, 1942, s. 2—a husband of a girl under sixteen who believes her to be his wife and has reasonable cause for his belief cannot be found guilty under s. 6. Again, it is no defence to a charge of indecent assault on a girl under sixteen—contrary to s. 14 of the Sexual Offences Act, 1956—that she consented to the indecency, and a reasonable and *bona fide* belief that the girl concerned was of or above the age of sixteen affords no defence (*R.* v. *Maughan* (1934), 24 Cr. App. R. 130). But it has been held that an invitation to a girl to touch the accused, which she did—without his doing to the child anything which if done against her will, would have amounted to an assault on her—does not constitute indecent assault on the child (*Fairclough* v. *Whipp* (1951), 35 Cr. App. R. 138, followed in *Director of Public Prosecutions* v. *Rogers* (1953), 37 Cr. App. R. 137). Incidentally, that a woman may be convicted under s. 14 was decided in *R.* v. *Hare* [1934], 1 K.B. 354, where the Court of Criminal Appeal also held that a woman who had had sexual intercourse with a boy of the age of twelve years had been rightly convicted of indecent assault, contrary to s. 62 of the Offences against the Person Act, 1861, which has been replaced by s. 15 of the Sexual Offences Act, 1956.

Procedure and punishment

By s. 38 of the Children and Young Persons Act, 1933, a child of tender years who does not understand the nature of an oath may give unsworn evidence, if in the opinion of the court he is sufficiently intelligent and understands the duty of speaking the truth. Yet such evidence must be corroborated, although—unlike other evidence which only by a rule of prudence requires corroboration—it may amount to corroboration of evidence given on oath (*R.* v. *Campbell* (1956), 40 Cr. App. R. 95). A child who has given unsworn evidence is punishable summarily under the above section, but a child who has taken the witness's oath and deliberately tells lies thereunder commits perjury. And though corroboration is not required in law where a child tenders sworn evidence, there nevertheless prevails a rule of prudence that the jury should be warned not to convict on such evidence alone (*R.* v. *Whitehead* (1929), 28 Cox 547). In cases of indecent assault, it is indecency and not the act of assault which needs corroborating (*R.* v. *Rolfe* (1952), 36 Cr. App. R. 4).

With regard to punishment, a revolution has taken place during the last fifty years or so, and especially recently, the tendency being steadily towards enlightened leniency. Thus no sentence of death may be pronounced or recorded against a person who was under the age of eighteen years at the time the offence was committed (Homicide Act, 1957, s. 9 (3)). Corporal punishment has been abolished (Criminal Justice Act, 1948, s. 2). Under no circumstances may a child under fifteen be sent to prison, nor may a young person under seventeen be sent to prison by a magistrates' court, while no court shall impose imprisonment on a person under twenty-one years of age unless the court is of opinion that no other method of dealing with him is appropriate (Criminal Justice Act, 1948, s. 17; Magistrates' Courts Act, 1952, s. 107). On the other hand, the summary trial or preliminary hearing of any charge brought against a child or young person, who is not charged jointly or together with a person who has attained the age of seventeen years, takes place in a juvenile court (Children and Young Persons Act, 1933, s. 46). Furthermore, youthful offenders may be sent to an approved school (Children and Young Persons Act, 1933, s. 57) or sentenced to undergo Borstal training (Criminal Justice Act, 1948, s. 20; Magistrates' Courts Act, 1952, s. 28), or committed for a short period to a detention centre (Criminal Justice Act, 1948, s. 18; Magistrates' Courts Act, 1952, s. 107)—strong emphasis being laid on the imparting of discipline and training rather than on the infliction of punishment.

J. Y.

EXTRAORDINARY GENERAL MEETING OF THE BAR

An Extraordinary General Meeting of the Bar will be held on Monday, 22nd June, 1959, at 4.30 p.m., in the Middle Temple Hall. An agenda (concerning subscriptions to the Council) will be circulated with the Annual Statement for 1958 on or about 5th June, 1959.

Wills and Bequests

Mr. Francis Phillips Cheesman, solicitor, of London, left £23,977 net.

Mr. Bernard Kuit, solicitor, of Manchester, left £37,749 net.

Mr. Arthur Albert Millichip, solicitor to West Bromwich Albion Football Club, left £200,792 net.

Common Law Commentary

ATTEMPTED RECOVERY OF INITIAL HIRE-PURCHASE PAYMENT

IN *Kelly* v. *Lombard Banking Co., Ltd.* [1959] 1 W.L.R. 41; p. 34, *ante*, a hirer under a hire-purchase agreement (in respect of a motor car) which was prematurely terminated by the owners (under a clause giving them the right to terminate in the circumstances) sought to recover from the owners the initial payment, amounting to £186 2s., which he had made.

The claim arose out of the special provisions of the particular hire-purchase agreement, although no doubt there are many such agreements in existence. The particular provision was that the initial payment was expressed to be made "in consideration of the option to purchase contained in cl. 3 (*b*) hereof." The hirer had made the initial payment and paid instalments which, in all, came to £419 6s. 2d. towards the full price of £534 1s. 9d., when execution was levied against him thereby entitling the owners to retake the motor car. The owners exercised their right of re-possession of the car refusing the offer of the hirer to pay the balance outstanding within a month.

Hirer's argument

The hirer's argument was that as he had never exercised the option to purchase, and as the initial payment was made in respect of that option, the consideration for the initial payment had wholly failed. The Court of Appeal rejected that argument very simply: the hirer in fact purchased an option and was possessed of the option but did not exercise it. The fact that an option is not exercised does not mean that one has not had the option. True in this case it was not exercisable until all payments had been made under the agreement: in other words, it was a conditional option. But it was none the less the option for which the initial payment was expressed to be made, and the fact that it was conditional and the conditions were not fulfilled did not make it any the less that which was bargained for. Consequently the claim failed.

No relief for hirer unable to complete transaction

Although the courts have recognised that a hire-purchase agreement differs in several respects from a pure hiring agreement, and, in particular, imposes heavier periodic payments during the period of "hire" than a pure hiring agreement, nevertheless, no relief exists to give to the hirer any credit for these excessive payments which have been made towards the price of the article where the hirer is unable to complete the transaction. There must be cases where this failure to assist the hirer works an injustice, and it is a pity no principle has been developed to mitigate hardship.

Comparison with initial payment on outright purchase

Let us compare the case where there is a contract of pure purchase and an initial payment is made: can a defaulting purchaser recover his initial payment? The answer to this depends in the first instance on whether the payment is a deposit or a part-payment of the purchase price. A payment by way of deposit is like an earnest to bind the bargain (unless there is express exclusion of a binding contract as where a deposit is paid "subject to contract") with an implied term that if the purchaser fails to complete, the vendor may forfeit the deposit, notwithstanding that he has suffered no loss (e.g., where he is able to re-sell at the same price) or has suffered a loss of less value than the deposit. It is not merely an earnest, however, since it is also a part-payment of the purchase price. A deposit is not a penalty so as to be irrecoverable, in the event that it is promised but not paid.

On the other hand, a part-payment not made by way of deposit is recoverable by the purchaser notwithstanding that he defaults in completion, but at the same time the purchaser is exposed to an action by the vendor for damages for breach of contract. There is a distinct difference here because if the vendor suffers no damage the purchaser may reclaim the whole of his part-payment (*Dies* v. *British and International Mining and Finance Corporation* [1939] 1 K.B. 724; *Stockloser* v. *Johnson* [1954] 1 Q.B. 476 (C.A.)). The latter case lays down that the vendor must have rescinded the contract if the purchaser is to be entitled to recover: if the vendor keeps the contract open the purchaser cannot recover his part-payment.

In *Dies* v. *British Mining* there are expressions to the effect that there may be "other cases" where equity would grant relief to a purchaser particularly where the sum paid is high and the vendor has acted "unconscionably." Exactly what is meant by "unconscionably" needs clarification. It would be interesting to see this argument brought forward in a hire-purchase case to see whether, and if so to what extent, it could be applied to give some relief to a hirer who has paid a large sum but lost the goods from termination of the contract shortly before it would expire by effluxion of time. In many cases—it may be particularly so in motor car cases—the depreciation may be so heavy that if the "unconscionable" test is applied it will be found that the owner passes the test and no relief can be granted. But with the extension of hire-purchase to so many things to-day, we may yet find cases where some such doctrine is desirable and could be applied.

L. W. M.

Honours and Appointments

Mr. W. H. CARLILE, the Doncaster and District Coroner, has been re-elected president of the Yorkshire Coroners' Society.

Mr. HOWARD WILLIAM MAITLAND COLEY, barrister-at-law, has been appointed deputy chairman of the Court of Quarter Sessions for the County of Stafford.

Mr. PAUL LEONARD, solicitor, of Slough, has been elected the new chairman of the Slough Round Table.

Mr. PETER D. ROBINSON has been appointed Clerk of Assize on the North Eastern Circuit.

Councillor J. F. STONE, solicitor, of Surbiton, has been elected president of Surbiton Chamber of Commerce.

Obituary

Mr. Bernard Barrington, solicitor, of London, died on 12th May, aged 82. He was admitted in 1900. From 1909 to 1917 he was on the Council of The Law Society.

Mr. Alfred King-Hamilton, solicitor, of London, died on 10th May, aged 87. He was admitted in 1896. A keen motorist, Mr. King-Hamilton was the sole surviving founder member of the Automobile Association.

Mr. Philip Dalla Mann, solicitor, of Sunderland, died recently, aged 63. He was admitted in 1920.

Mr. Herbert Perkin, solicitor, of London, died on 10th May, aged 72. He was admitted in 1928.

The Practitioner's Dictionary

" BELONGINGS "

THE word " belongings " is given a very flexible interpretation according to the context in which it is found, but the primary meaning of a gift of " belongings " is wide enough to pass a testator's personal estate. Support for this statement may be found in *Re Mills' Will Trusts* [1937] 1 All E.R. 142, where a bequest of " all my home and personal belongings except the piano " was found to include all the testatrix's personal estate (with the exception of the piano which she had specifically bequeathed to her grandson) as, in the opinion of the court, in the absence of a context restricting the meaning of the term, " belongings " should be interpreted as meaning " property."

In arriving at this decision, Bennett, J., founded his judgment on the finding of Eve, J., in *Re Bradfield* [1914] W.N. 423. In that case, by means of a home-made will, the testator gave " all other belongings " to his sister and the court took the view " that ' belongings ' must be given its primary meaning of ' property ' and ' all other belongings ' covered all that the testatrix did not specifically dispose of " (*per* Eve, J.).

The context may compel the court to hold that a gift of " belongings " has passed less than the residue of the testator's personal estate. For example, in *Re Hynes* (1950), 66 T.L.R. (Pt. 2) 795, a barrister bequeathed to the plaintiff " all my books, furniture and other personal belongings whether at New Court, Temple, or elsewhere " and the plaintiff contended that by the gift of " other personal belongings " he was entitled to the residue of the estate. The Court of Appeal rejected this argument as, having regard to the words used, their context and all the surrounding circumstances, the testator had not disposed of the residue of his estate but Sir Raymond Evershed, M.R., did not dispute that in other cases the word " belongings " had been construed to mean " that which belonged to the giver."

The New Zealand decision in *Re Stone* [1954] N.Z. L.R. 17 may also be important. The testatrix made two bequests, one to her husband of money in the Post Office Savings Bank and the other to two of her nieces of " personal belongings." Following *Re Hynes, supra*, but distinguishing *Re Mills', supra*, Hutchinson, J., decided that he could not read the bequest of " personal belongings " as a residuary gift and, in his view, there was no " special reason why any wider meaning should be given to the words than personal goods and effects." It was held, therefore, that the gift of " personal belongings " passed such things as the testatrix's jewellery and furniture but not the money in the Post Office Savings Bank. As her husband had predeceased her the court decided that this money should go as on an intestacy.

It seems that a gift of " belongings " will not normally pass real estate. Authority for this may be found in *Re Price* [1950] 1 Ch. 242, where a testator provided in his home-made will: " I leave all my belongings to my daughter." No provision was made as to residue. Partly on the ordinary meaning of the word " belongings " in the English language and partly on the construction of this particular will in the light of surrounding circumstances, Romer, J., held that the gift did not include the testator's freehold house as " belongings " should be given the same meaning as it received in *Re Mills', supra*, and not a more extended meaning which would include the freehold property in question.

Re Curneen (1956), 91 I.L.T. 55, was a somewhat similar case. The testator gave " all the remainder of my belongings " and the High Court of Eire decided that this was not sufficient to pass the testator's registered freehold farm land. Murnaghen, J., took the view that the word " belongings " comprised " chattels and personal property as a general rule " and he found nothing in the will as a whole to indicate that the term should be given a contrary meaning in that particular case.

There is Australian authority (*Re Seccombe* [1948] St. R. Qd. 11) for saying that a gift of " all other belongings " should be given the widest possible meaning so as to include a grazing homestead of which the testator was lessee, while in *Simson* v. *Alexander* [1922] S.C. 14, the Court of Session decided that the term " belongings " was capable of conveying both heritable and moveable estate. The Lord Justice-Clerk (Scott Dickson) thought that " ' belongings ' really means that which belongs to the person, or the ' property ' of the person " and this appears to be the only occasion on which a court has found that a gift of " belongings " may pass real estate.

D. G. C.

" THE SOLICITORS' JOURNAL," 21st MAY, 1859

ON the 21st May, 1859, the advertisement columns of THE SOLICITORS' JOURNAL were much concerned with the health of its readers. Mr. Ephraim Moseley, surgeon dentist of 9 Lower Grosvenor Street, a holder of Her Majesty's royal letters patent, announced a " new, original and invaluable invention consisting in the adaptation with the most absolute perfection and success of chemically prepared white and gum-coloured india rubber as a lining to the gold or bone frame " of artificial teeth. " All sharp edges are avoided; no spring wires or fastenings are required; a greatly increased freedom of suction is supplied; a natural elasticity, hitherto wholly unattainable, and a fit, perfected with the most unerring accuracy are secured, while from the softness and flexibility of the agent employed, the greatest support is given to the adjoining teeth . . . The acids in the mouth exert no agency on the chemically-prepared india rubber and, as it is a non-conductor, fluids of any temperature may be retained in the mouth." Keeting's cough lozenges were " a safe and certain remedy for coughs, colds, hoarseness and other affections of the throat and chest. In incipient consumption, asthma and winter cough they are unfailing. Being free from every hurtful ingredient, they may be taken by the most delicate female or the youngest child." Then there were Holloway's Pills: " For health, happiness and longevity pure air is essentially necessary; but how in over-crowded cities is a wholesome atmosphere to be attained? Artificially it cannot be accomplished; but Nature to a considerable extent rectifies this disadvantage by making certain organs throw out the impurities derived from foul air. Holloway's pills wonderfully assist this purifying process by their peculiar action on stomach, liver, lungs and kidneys." John White of 228 Piccadilly advertised White's Mot-Main lever truss (" allowed by upwards of 200 medical gentlemen to be the most effective invention in the curative treatment of hernia ") and also " elastic stockings, knee-caps, etc., for varicose veins . . ."

SCHEDULE A REVIEWED—I

In one aspect this year's Budget does not come up to expectation. There has been much speculation and agitation for the abolition of Sched. A tax, but no revision was proposed in the Chancellor's Budget Speech and it seems that this tax is going to be with us for at least another year, if not for longer. It may thus be useful to look again at the main provisions and at the reliefs open to the taxpayer. With this in mind it is proposed to review the position, in this and the following article.

Some annual value is placed on every property in the United Kingdom. This forms the basis for the Sched. A assessment. The annual value itself is determined in accordance with the rack-rent, i.e., the rent at which the property could be fairly let in the open market on a yearly tenancy, the tenant being responsible for rates and similar outgoings, the landlord bearing the cost of repairs, insurance, etc., the rent being the only consideration for the letting. Where a premium is paid for the lease the amount of the premium plus a notional sum for interest is spread over the term of the lease and added to the annual rent payable under the lease. Let us take an example from the actual decision (*Davies* v. *Abbott* (1926), 11 T.C. 575) where this principle was laid down. In that case a lease was granted for a term of fourteen years in consideration of a premium of £200 and an annual rental of £30, the lessee being responsible for all repairs (internal and external except to the roof). The assessment was made on the following basis :—

	£
Rent	30
One-fourteenth of premium	14
Adjustment in respect of repairs	14
Interest on premium	10
Annual value ..	£68

Adjustment for repairs

Where the premises are let otherwise than at a true rack-rent, the annual value may be fixed by taking into account similar property in the neighbourhood or by adjusting the actual rent paid allowing for any landlord's burdens borne by the tenant or *vice versa* so as to arrive at a notional rack-rent. For example, where the tenant is responsible for internal repairs the Inland Revenue usually adds between 5 and 10 per cent. to the amount of rent payable, where he is responsible for internal *and* external repairs the percentage added is normally between 10 and 15 per cent., depending on the nature of the property and the district where it is situate.

Periodic revaluation

Originally it was envisaged that there should be a revaluation every five years to reflect the change in the value of real property. Due to the war, however, the revaluation which was due to take place for 1941–42 was suspended and no date for a new revaluation for Sched. A purposes as distinct from rating has ever been fixed since. Thus at present the annual value for most properties is still based on the 1935–36 valuation. However, to safeguard the Crown against loss of revenue, legislation was passed in 1940 to make any rent received (making appropriate allowances for repairs and other expenses) in excess of the annual value liable to tax under Case VI of Sched. D.

Present position

The present position is, therefore, as follows :—

Owner-occupiers of dwelling-houses whose annual value was fixed prior to 1936–37 benefit from the deflated value of property then prevailing.

Lessors who receive rent from property let in excess of the Sched. A value are assessed in respect of the excess (with appropriate adjustments) under Case VI of Sched. D.

Owner-occupiers of business premises are entitled to deduct the net annual value from their profits. Here again the low Sched. A valuation as far as income tax is concerned makes little difference, as it is reflected by a higher assessment in respect of the trading profits under Case I of Sched. D.

Schedule A and rating valuation

The basis of determining the annual value for Sched. A purposes and rating is similar but not identical, and both values are since 1948 fixed by the Inland Revenue. The latter has power to inspect and make copies of the rate book, and indeed the annual value of property in England and Wales was largely based on the rating valuation although in law the latter is not binding on the Inland Revenue in determining the annual value for Sched. A.

New dwellings

Prior to 1956 it was the practice of the Inland Revenue to fix the Sched. A value for new owner-occupied premises in accordance with the rating assessment. But since the rating revaluation came into force on 1st April, 1956, the new rating assessments have not been used for Sched. A purposes, and Sched. A assessments on this type of property are instead continuing to be made at the figures which would have applied had the assessments been made before 1st April, 1956, i.e., generally on the basis of similar properties in the neighbourhood. This is based on an extra-statutory concession and is subject to the concurrence of the local General Commissioners.

Annual value binding on the Inland Revenue

The Sched. A value, once fixed, is binding on the Inland Revenue for the years of assessment between one year of revaluation and the other; thus in most cases the annual value for 1936–37 to the last year of revaluation still holds good. The Inland Revenue has no power to raise the Sched. A value even where the rental value of the property has gone up considerably. They can only do so in the following cases :—

(1) Where as a result of structural alterations a new unit of assessment has been created.

(2) If the inspector of taxes discovers that there has been an omission of some property in the first assessment. This is the case even where the undervaluation is due to the inspector's own error or mistake.

(3) Where the undervaluation is due to some omission or misinformation by the taxpayer.

Taxpayer's right to appeal

The taxpayer, on the other hand, is in a much more favourable position. He can appeal against the original assessment for the year of revaluation within forty-two days of the notice of assessment or, where no notice was served on him, within twelve months from the end of the year of

revaluation. Furthermore, he has a right to appeal against the assessment for any year and to demand a revaluation of the property in question. Of course, as the annual value is at present based on a rental prevailing in 1935 and thus grossly below to-day's value, appeals by taxpayers are rare. However, in some isolated cases this is a point worth bearing in mind.

In the next article it is intended to deal with the various deductions and reliefs available to the taxpayer in connection with Sched. A.

(To be concluded) **M. E.**

A Conveyancer's Diary

"PRIVATE" CHARITABLE TRUSTS

THERE are, of course, no such things. With one possible exception, trusts must be either private, or for the benefit of individuals, or public, which is another description of the trusts which the law calls charitable. The exception consists of those anomalous cases in which trusts for the upkeep of graves and monuments, for the maintenance of particular animals, or for the furtherance of objects not *per se* charitable, such as fox hunting, have been upheld in the courts. It was suggested by the late Sir Arthur Underhill in his work on the Law of Trusts (8th ed., p. 79) that those decisions were nothing more than a concession to human weakness and sentiment. Those cases were treated as anomalous by Roxburgh, J., in *Re Astor's Settlement Trusts* [1952] Ch. 537, and no other explanation is available to fit them into the recognised categories of trusts. What, then, is meant by a "private" charitable trust? It is a trust which is erected in such a way as to enable it to take advantage of the privileges, fiscal and otherwise, which the law accords to public or charitable trusts, but which yet is primarily intended to benefit not the public at large but a collection of individuals.

An attempt to create such a trust was made, rightly as it turned out, by a testator who, apparently, made his own will, in *Davies* v. *Perpetual Trustee Co. (Ltd.)* [1959] 2 W.L.R. 673; p. 370, *ante*. I will not set out the words of the trust disposition in full: it is sufficient to say that a testator who died in New South Wales in 1897 gave certain property, subject to life interests, to trustees for the purpose of establishing a college for the education of the issue of Presbyterians (interpreted as meaning Presbyterians living at the testator's death), descendants of those settled in New South Wales "hailing from" or born in the North of Ireland according to certain religious standards. This trust was attacked as being void on the grounds, first, that it was uncertain, and, second, that it was not a good charitable trust. The Judicial Committee of the Privy Council, on a recent appeal thereto, dealt only with the second point, and on that point declared the trust not to be a good charitable trust because it lacked the element of public benefit.

Privy Council judgment

The judgment of the Committee was delivered by Lord Morton of Henryton, who cited *Oppenheim* v. *Tobacco Securities Trust Co., Ltd.* [1951] A.C. 297, for a reiteration of the proposition that a trust is not charitable unless it is directed to the public benefit, and an elaboration and illustration of that general rule by Lord Simonds, who said that "a group of persons may be numerous but, if the nexus between them is their personal relationship to a single propositus or to several propositi, they are neither the community nor a section of the community" so as to render a trust for their benefit a trust for the public benefit. (There is an exception to this rule also—anyone with any familiarity with the law of charitable trusts will know that its rules are full of exceptions—in the case of trusts for the relief of poverty, which have for long followed a line of their own: see, e.g., the "poor relations" cases, as exemplified in *Re Compton* [1945] Ch. 123.) Applying this principle to the case before the Committee, Lord Morton gave the conclusions of the Committee in this way: assuming the purpose of the trust to be either the advancement of education or the advancement of religion, i.e., a valid charitable purpose, yet they were unable to hold that the objects of the trust were either the community or a section of the community. "They clearly are not 'the community,' for the testator has been at pains to impose particular . . . qualifications upon the persons who are to benefit from this education. Nor can these persons . . . be 'a section of the community' in the sense in which these words have been interpreted in the authorities. The facts which must be proved by any boy who claims to come within the class of beneficiaries have already been stated, and it is clear that the nexus between the beneficiaries is simply 'their personal relationship to several propositi,' namely, certain persons living at the death of the testator."

Re Koettgen's Will Trusts

Contrast the result of this case with that of *Re Koettgen's Will Trusts* [1954] Ch. 252. In that case a testatrix left property on trust for the promotion of commercial education. The testatrix declared that the persons eligible as beneficiaries should be persons of either sex who were British subjects and who were desirous of obtaining tuition for a higher commercial career but whose means would not allow them to obtain such education. (It was conceded in argument that this was a trust for the advancement of education, not a trust for the relief of poverty, so that the *Re Compton* type of case did not apply, but the general principle about public benefit stated above by reference to the *Oppenheim* case did apply.) The testatrix further directed that it was her wish that in selecting the beneficiaries her trustees should give a preference to any employees of B. & Co.; failing a sufficient number of beneficiaries under such description, then the persons eligible should be any persons of British birth, provided that the total income to be available for benefiting the preferred beneficiaries should not be more than 75 per cent. of the total.

This trust was upheld as a good charitable trust. Upjohn, J., held that, so far as the primary class of beneficiaries (persons of either sex who were British-born subjects) was concerned, the trust clearly fulfilled the requirement that it was for the benefit of the public. It was only when one came to make a selection from that primary class that the employees of B. & Co. came into consideration: did that invalidate the primary trust? In the learned judges' view, no: it was at the stage when the primary class of eligible

persons was ascertained that the question of the public nature of the trust arose and fell to be decided, and it seemed to him that the will satisfied that requirement, and that the trust was of a sufficiently public nature.

Arrangements for the benefit of individuals

The requirements of the testator in *Davies'* case were so highly individualistic that it is perhaps doubtful whether they could have been fitted into the framework of a trust erected on the *Koettgen* model. But it is obvious that the latter kind of trust indicates the way to arrangements which in practice will enure for the benefit of individuals, as contrasted with the public or a section of the public as that phrase has been interpreted in the authorities, but yet enjoy the peculiar status accorded to public trusts in our law. The direction that a maximum of 75 per cent. of the income of the trust fund should be available to benefit the preferred class of beneficiaries does not appear to have influenced this decision: the whole income (or capital, if the settlor had so desired) could have been made available for the preferred class, if the trustees had in exercise of a discretion selected members of the preferred class (or perhaps it is better to say, sub-class) in preference to members of the primary class. The essentials of a trust on this model are the creation and definition of a primary class which without doubt fulfil the requirements already referred to of public benefit, followed by the creation and definition of a sub-class within the primary class, which the trustees at their absolute discretion may prefer. Members of this sub-class may (as the primary class must not) be described by reference to "their personal relationship to a single propositus or to several propositi," e.g., relationship to an individual, employment by a given company, or the like. Subject to that, and subject of course to the purposes of the trust being charitable, i.e., falling within one or other of the four heads of Lord Macnaghten's classification of charitable trusts in *Pemsel's* case ([1891] A.C. 531), we then have a public trust with some of the attributes of a private trust and a private trust with some of the attributes of a public trust. If a "private" charitable trust is then strictly impossible, that is good enough for most practical purposes.

"A B C"

Landlord and Tenant Notebook

SURRENDER OF INVALID BUSINESS TENANCY

SOMETHING like fifty books, to all of which the learned judge had been referred by one side or the other, accumulated on Harman, J.'s desk during the hearing of *Rhyl Urban District Council* v. *Rhyl Amusements, Ltd.* [1959] 1 W.L.R. 465; p. 327, *ante*; and the title of this article merely attempts to indicate as much of the nature of the dispute as possible.

The effect of events which led up to the dispute was partly determined by changes in the law, and I do not mean such changes as transferred the functions of a body known as the Rhyl Improvement Commissioners to the Rhyl Urban District Council, the plaintiffs in the action, or those of the old "Local Government Board" to the Minister of Health (Ministry of Health Act, 1919). But it will be convenient to commence the story by mentioning the Public Health Act, 1875, s. 177: "Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same" (see now the Local Government Act, 1933, s. 164).

The subject-matter of the dispute was part of some property which the aforementioned Improvement Commissioners had acquired under a local Act passed in 1892, authorising them to enclose and reclaim from a defined portion of a specified tidal river "so much of the Mudlands now belonging to or reputed to belong to Her Majesty the Queen in the right of Her Crown," and to appropriate the land for the purposes of an ornamental lake and pleasure grounds; further providing that the reclaimed lands should be vested in the Commissioners for the purposes of and subject to the provisions of the Act. The Royal Assent was given to this measure on 27th June, 1892: Her Majesty may or may not have been amused by the "or reputed to belong." And by it the Commissioners were also authorised to sell and convey or dispose of all or any part(s) of the land except the site of embankments for which it provided, and also to erect and maintain refreshment rooms in the pleasure grounds and to let the refreshment rooms for a term not exceeding three years.

Shortly after the death of Queen Victoria, another local Act, the Rhyl Improvement Act, 1901, authorised the urban district council (who had taken over from the Commissioners in 1895) to provide and carry on or arrange for the provision of or carry on suitable entertainments, exhibitions and amusements in buildings upon the recreation ground, and to let such buildings for terms not exceeding seven years.

Void leases

The plaintiff council and defendant company first had dealings of some sort in 1908. In 1910, the plaintiffs granted or purported to grant the defendants a fourteen years' lease of the lake and pleasure grounds. Three years before this (purported) lease was due to expire it was (purportedly) surrendered and a twenty-four years' "lease" of part of the premises "granted," the process being repeated in 1932 when the term was made one to expire on 1st May, 1945. And though at that time the clerk to the council, being conscious of the necessity for consent under the Public Health Act, 1875, experienced some doubt, sleeping dogs were allowed to lie, and were awakened only in 1953 or 1954 when negotiations had been opened for another surrender and re-grant, and had broken down. The plaintiffs then served the defendants, whom they described as yearly tenants, with a notice to quit expiring 1st May, 1955, or the end of the year of their tenancy which would next expire after the end of a half-year from the service of the notice.

The underlying proposition was, of course, that "when a tenant enters under an agreement for a term which is void at law, he is liable as tenant from year to year, on all the terms of the agreement applicable to a yearly tenancy," as Kelly, C.B., put it in *Martin* v. *Smith* (1874), L.R. 9 Exch. 50. This proposition was not contested. Serious efforts were made to uphold the grants as sanctioned by the "sell and convey and *dispose of*" provision in the 1892 Act; authority was found both for and against the view that "dispose of" covered letting; but, apart from the considerations that the

section was only intended to apply to surplus lands and that the land concerned had been acquired before the Act came into force, Harman, J., concluded that " dispose of " here meant " dispose of absolutely. It is merely a description of the disposition of the land following a sale." The reasoning, in my submission, rather ignores the " or," the use of which calls for some explanation ; but the fact that another section of the Act expressly conferred limited letting powers was a further consideration supporting the view that " dispose of " meant " dispose of absolutely," as there would otherwise have been no necessity for authorising letting.

The question when this yearly tenancy began, however, became a very important one in a different connection. But before coming to that it is necessary to resume the interrupted narrative.

Business tenancy

For, a few weeks after the service of the notice, the Legislature again took a hand : the Landlord and Tenant Act, 1954, was passed ; Pt. II came into operation on 1st October, 1954, and the defendants promptly served notice of a request for a new (fourteen years') tenancy, to commence 1st May, 1955, accompanying the notice by a letter stating that it was served without prejudice to any existing rights or claims, i.e., that the 1932 lease (for thirty-one years) was current and valid. Both parties then lay low till October, 1955, when the plaintiffs sent a s. 25 notice to terminate it on 1st May, 1956, stating that they would oppose any application for a new tenancy (the reports do not tell us what ground was specified). The defendants served a counter-notice and wrote another letter saying that any steps taken by them under the 1954 Act, Pt. II, were precautionary ; they still contended that the 1932 lease was valid and the notice to terminate null. And later, the plaintiffs served a second notice to terminate, expiring 1st May, 1957 ; this time stating that they would not oppose an application for a new tenancy. Thus the questions whether the 1932 deed was effective and whether the notice to terminate was valid depended on a number of considerations.

Estoppel

It was argued, on behalf of the plaintiffs, that by claiming a new tenancy under the 1954 Act, the tenants had estopped themselves from alleging that the 1932 lease still subsisted. It had been held in *W. Davis (Spitalfields), Ltd.* v. *Huntley* [1947] 1 All E.R. 246 that a tenant claiming a new lease—in that case under the Landlord and Tenant Act, 1927—could not be heard to say that the old tenancy was still subsisting ; even if he failed to obtain a new grant, he could only make his claim on the footing that the old one was at an end.

But Harman, J., distinguished that authority in two ways. The tenants were seeking to retain the 1932 lease which the plaintiffs said was void ; not the alleged yearly tenancy. And when issuing the summons they had done all that they could to preserve their rights : they had not made an election.

On the other hand, the plaintiffs had *not* estopped themselves from denying the validity of that 1932 lease. It was true that the relations of the parties had been regulated by that lease ; but, as was held in *Minister of Agriculture and Fisheries* v. *Hulkin* (unreported, but referred to in *Minister of Agriculture and Fisheries* v. *Matthews* [1950] 1 K.B. 148), " the power given to an authority under a statute is limited to the four corners of the power given " ; a donee cannot extend his power by estoppel. It might be different if the plaintiffs had been private people ; but the 1932 lease was *ultra vires* and void.

Effects of surrender

This being so, a further question, namely, whether the s. 25 notices to terminate had been made to expire at the proper time, became important ; and in this connection efforts were made by the defendants to show that 1st May was not an anniversary of the commencement of the tenancy.

These efforts began with an argument that if a lease was void so was a surrender of that lease, and consequently the 1910 lease continued till 1st June, 1924, that of 1921 till 1st February, 1945.

The decision arrived at on this point is one which suggests that there is some use for seals. For the cases cited in support of the proposition were all cases of surrender by operation of law, or so held to be.

In *Doe d. Earl of Egremont* v. *Courtenay* (1848), 11 Q.B. 702, and *Doe d. Biddulph* v. *Poole* (1848), 11 Q.B. 713, the court dealt with new grants which had been made *ultra vires* and decided that the effect was that the old existing tenancies were not surrendered. While Harman, J., emphasised the fact that there was " no surrender by deed," one interpretation of these decisions suggests that it was not so much the absence of that formality (indeed, in the earlier case, the new lease, which was under seal, mentioned the surrender of the old one) as the obvious intention of the parties which was decisive ; as Coleridge, J., put it in that earlier case : " where the new lease does not pass an interest according to the contract, the acceptance of it will not operate a surrender of the former lease " ; he did proceed " in the case of a surrender implied by law from the acceptance of a new lease, a condition ought also to be understood as implied by law, making void the surrender in case the new lease should be made," but went on : " and that, in case of an express surrender, so expressed as to show the intention of the parties to make the surrender only in consideration of the grant, the sound *construction* of such an instrument, in order to effectuate *the intention of the parties*, would make that surrender also conditional to be void in case the grant should be made void."

But if it was construction rather than formality that affected these transactions, the reiterated " *made* void "—not " turn out to be void "—may be of great importance ; for in a more recent case cited by Harman, J., *Canterbury Corporation* v. *Cooper* (1908), 99 L.T. 612, not only had there been no " express surrender " of the old lease, but it was said (by Channell, J.) that the effect would be that the surrenders would be *voidable* and could be set aside while the former terms were still running. And in the case before the court nothing of that kind had been done ; the " terms " had just expired.

The decision on this point was, therefore, that the surrenders of 1910, 1921 and 1932 had merged the terms in the reversion, as they had been expressed to do. But this did not dispose of the question, when exactly had the resultant yearly tenancy brought into being by the 1932 grant commenced to run. This will be the subject of a later article.

R. B.

THE LAWYERS CHRISTIAN FELLOWSHIP will hold its next quarterly meeting at The Law Society's Hall, Bell Yard, W.C.2, on Friday, 29th May, 1959, at 6.30 p.m. Tea will be available from 5.30 p.m. The meeting, to which all lawyers, law students and visitors are warmly welcomed, will be addressed by Sir John Wolfenden on " The Relationship of Sin and Crime."

HERE AND THERE

THE POPULATION

SHEER love of humanity and of the intimate proximity of one's own kind may well induce twenty jolly holiday-makers to pile into the same compartment of an otherwise empty railway train. Indeed, I am assured that it has actually been done. Those good and happy people who actually share this exuberant companionableness, far above the remote and fastidious benevolence of professional philanthropists, can never feel that this country is over-populated. Wedged motionless in the Underground during the hours of the great daily dispersal, picking their way over and around the massed bodies, prone or supine, covering the grass or its remains in what are still laughingly called "open spaces," journeying through mile after mile of panoramas and prospects of urban rooftops, their hearts are lifted up at the positive assurance that soon a misanthropist will have to travel to outer space to find a social vacuum. But those who are not so virtuous and basely look for private satisfactions incompatible with communal living sometimes permit themselves another sort of sentiment and long to be translated to another state of being, beyond the limitations of living space. The most depraved desire that translation, and speedily, for some (it seems to them) surplus millions of their fellow beings. It is only such who can watch with complacency and even pleasure the mounting figures of road casualties—4,773 killed in 1949, and every prospect of some 6,000 deaths in 1959. Surely few things will so puzzle our posterity about our attitude to life and death as the contrast between our almost complete *insouciance* towards a death rate by agonising violence which would be high even for a major military or naval engagement, and our almost morbid sensibility and feeling of guilt over the premature dispatch from this world of quite a small number of persons who, on any view, have shown themselves highly dangerous members of the community. The contrast remains perfectly extraordinary, no matter what views one may have on capital punishment, since the condemned and executed on the roads have been found guilty of no offence at all. If it's a question of guilt consciousness and self-accusation, few of us have treated another human being so unkindly as to drive him to crime or murder, but we are all constantly using for the most frivolous purposes the notoriously lethal motor car.

SPEED AND URGENCY

IN the circumstances, since we have produced these swift mechanical dragons to carry us with the speed of cannon balls, it would not be unworthy of rational beings to ask ourselves explicitly, once in a way, what they are for. Their whole *raison d'être* is speed. And what is the object of speed? Urgency. Very well then, what urgency is there really for whole populations to throw themselves simultaneously from a metropolitan suburbia to a coastal suburbia? And if they do imagine such an urgency, how can any conceivable road system prevent such a mass migration from defeating the whole object of the vehicle, speed? And if the solution of great new roads for mass speeding were adopted, how could that affect the violent death rate? It may well be that the forecast of Ross-on-Wye Cottage Hospital was all too prescient when it was recently planned to improve it to deal with the increase in casualties expected when the Ross Spur motorway is completed. On that showing there seems little justification for any dogma that the village green of Great Bagwash or the narrow street of Little Scratching have no business to object to being uprooted and flattened to clear the way for someone in Bootle who is in a great hurry to get to Brighton.

ALL MECHANISED

OF course, there's nothing inherently evil even in the potentially lethal internal combustion engine. What is perilous about it is irresponsible thinking about it and treating it as if there were a god in the machine. It needs putting mentally in its place. The right to drive is a good deal less sacred than the right to live, and mechanisation is not an end in itself but a means to an end. What some of those ends are we know all too well. Crime, we know, is highly and efficiently mechanised. That, I am told, is one of the reasons why motorists receive so much irritating attention from the police; there is nothing personal; it is largely reconnaissance work. In the recent debate in the House of Lords on vice, it appeared that prostitution has been mechanised and is now a branch of motoring. An acute writer has lately suggested that a great deal of bad, careless, irresponsible driving results from the number of "business expenses" cars there are on the road. It's the firm's car. Why be queasy about the damage suffered by it in consequence of the cutting in and bumping system of getting the better of other drivers? The suggestion is that accidents should be taken off the expense account. Let us end this many-sided topic with a word from Mr. Justice Elwes: "People who drive dangerously should realise that they are lucky if they do not kill someone, and not unlucky if they do."

RICHARD ROE.

LAW SOCIETY'S HONOURS EXAMINATION

The following candidates were successful in The Law Society's Honours Examination, held in March, 1959: FIRST CLASS: *None*. SECOND CLASS: H. Berkman, LL.B. (Leeds); D. A. Berry (Llandudno); E. G. Bunting (Newcastle-upon-Tyne); A. J. Cooper, LL.B. (London); J. R. Courteney (London); C. C. M. Edney (Berwick-on-Tweed); M. C. L. Gaiger, LL.B. (London); B. L. Garry, LL.B. (Liverpool); P. N. Gerrard, M.A. (Oxon); B. Gillbanks, LL.B. (Liverpool); G. J. Hearne (Birmingham); D. J. Jones (Wellington, Somerset); L. Levy, B.A. (London); P. H. London (Helston); J. M. Roberts, LL.B. (Leeds); B. T. C. Small, B.A. (Cantab.); R. J. Stevens, LL.B. (London); D. G. Taylor, M.A. (Oxon); C. W. Wade, LL.B. (London); E. Walker (London); H. F. M. Watts (Newton Abbot); D. J. Weston (London); C. T. Woodward, B.A. (Oxon). THIRD CLASS: N. J. Barker, B.A. (Cantab.); R. M. Barker, B.A. (Cantab.); M. H. S. Brand (London); J. B. Broadhead, LL.B. (London); C. G. Court (Margate); J. D. Cowburn (Preston); A. St. John Davies, M.A. (Oxon); C. C. E. M. Freedman (London); J. C. Greenwood (Reading); F. N. F. Haddock (Horsham); J. C. C. Knight (Huntingdon); N. McClement, LL.B. (London); D. Martin, LL.B. (London); A. Meltzer (London); A. A. Meyer (London); L. Parkus (London); D. H. Roberts (Sutton Coldfield); P. T. Ryan, LL.B. (Leeds); C. L. Santhouse (Manchester); J. P. A. Simpson (London); J. C. Stevens (Watford); J. C. Thurnhill (Preston); L. Tobias, LL.B. (Birmingham); J. O. Ward (Hove); D. L. Weetch (London).

The Council of The Law Society have given class certificates to the candidates in the second and third classes.

Ninety-seven candidates gave notice for Examination.

CENTRAL MIDDLESEX LAW SOCIETY

ITS FORMATION AND THE END OF A MYTH

To recount some of our own story will, we feel, encourage those who have been wondering whether, and how, to embark on the formation of local law societies in North and South Middlesex and the metropolitan boroughs. Our own experience in Central Middlesex convinces us that the 7,000 or more solicitors in those areas are waiting for their own local societies. They are waiting to meet together locally, not solely to attend formal functions, but even more to be able to discuss day-to-day professional problems informally at short luncheon and dinner meetings.

To start our tale, there were three of us at the Eastbourne Conference: R. C. Garrod, W. Gillham and J. A. S. Nicholls, and whilst two of us were being regaled for lunch at Arundel by the local law society, we chatted about the possibilities of a society in Middlesex, because we had found so much value in the informal side of meetings between solicitors. One of us, in Surrey, with " a plate up at home," but with his substantial practice in Middlesex, had had much benefit from membership of the Mid-Surrey Law Society. We promised to see what we could do to form a society in Middlesex when we got home again.

We kept our promise, and two more joined our ranks: J. C. Christie and R. G. Phillips. We had a first luncheon together at The King's Head Hotel, Harrow-on-the-Hill, and we learned at that informal meeting the joy of discussing freely local topics affecting us, points of law and those complex questions of costs on which so often two or more heads are better than one. That friendly meeting itself convinced us that much benefit could be derived from a local law society. We saw too that there were many things that a local society might do to help its members—such as improvements of the local court buildings and the facilities there provided for solicitors and clients, and the establishment of a minimum scale for conveyancing transactions, thus ending the black suspicion sometimes to be met in the " non-scale " areas.

We met again and again every week or so for lunch, and over the lunch table we approved draft rules for submission to a formation meeting, and arranged amongst ourselves to write personally to every solicitor in the " Law List " in our area to invite him or her to attend a meeting in January to discuss the formation of the society. The response to our letters was overwhelmingly enthusiastic, the theme of the replies being " Yes, we will join, this is what we have long needed ! "

Help from The Law Society

The Law Society came to hear of our activities, and offered us help and invited us to lunch when we discussed our plans with Sir Thomas Lund, Mr. Peacock, a member of the Council, Mr. H. Horsfall Turner and Mr. Herbert Lloyd. As a result we extended the area of the proposed society, and decided to make the January meeting the formation meeting. The Law Society helped us with the printing of our draft rules and gave us invaluable help, advice and encouragement. More luncheon meetings and work followed and we were joined at our final meeting by R. C. Politeyan from one of the new districts we had decided to cover.

We had a splendid formation meeting on that foggy night at the end of January. Some 80 to 100 of us met at the Century Hotel, Wembley, dined there with our guests, Sir Sydney Littlewood, Lady Littlewood, Sir Thomas Lund, Mr. H. Horsfall Turner, and Mr. W. E. Balmer, a vice-president of the Mid-Surrey Law Society. Sir Sydney, who had inspired the formation of the Mid-Surrey Law Society, made a splendid speech to encourage us on our way, and we then quickly adopted rules and elected the first officers and committee. Sir Sydney and Lady Littlewood took four hours to get home in that fog ! Numbers of us are still recovering from the side-kicks of the 'flu we caught !

Developments since formation

Since the formation meeting, the new committee has been busy planning future activities and this has made it consider the aims and purposes of local law societies. It has in mind probably as of paramount importance the bringing together of members in large or small meetings with a view to frequent exchanges of opinion between them. With this in mind it is holding a series of luncheon and dinner meetings in various districts of the society's area where members can meet together, get to know each other and discuss. The first of these meetings has already been successfully held with Mr. James Matthews of The Law Society speaking to us on Legal Aid and Advice. He struck the right note of informality which made everyone feel able to join in the ensuing discussion.

Press relations are, with the valuable assistance of The Law Society, being carefully maintained, and it is found that the reporting of the Society's meetings in the legal journals and Central Middlesex press is not only stimulating the growth of our own membership, but giving rise to enquiries from outside our area which indicate that it may not be long before North and South Middlesex have their own societies.

The committee have other business of great importance on hand or pending, such as the possibility of establishing a county court in Harrow, minimum scale charges for land conveyancing transactions, the question of obviating some of the delay at H.M. Land Registry, etc. It aims to keep in touch with its members not only by the meetings already mentioned, but by close personal contact of committee and members, one committee member having been selected for each county district of the society, and also by a news sheet issued every three or four months.

We are a town and country area and the society will hope to eliminate some of that distrusting parochial outlook that town sometimes has to country and *vice versa*. We hope, too, to help the profession as a whole by providing a further link in the chain of societies which can convey opinions and statistics from the profession to The Law Society. At our first dinner meeting, for instance, an opportunity was given to members to tell Mr. Matthews from The Law Society how many of those present had already given legal advice under (i) the voluntary scheme, and (ii) the statutory scheme.

We continue by re-stating our purpose in another way, and to do so we use part of a message from Sir Sydney Littlewood, vice-president of The Law Society, to the Mid-Surrey Law Society: " The great purpose of a solicitor's job is to help people in trouble and in difficulty. In troubles and difficulties there are often two or more sides, each side represented by a solicitor. This is my experience: that if I can talk to the man on the other side as a friend I usually attain my object—the removal or alleviation of my client's troubles—far quicker and more effectively than I do by fighting all the way, and I believe that every experienced solicitor will say

that he has found the same. Thus the Mid-Surrey Law Society, in enabling us to know each other, has helped our clients, and more than 100 other local law societies . . . are doing the same for 10,000 other solicitors."

The myth was that a local law society would never become formed in Middlesex! In Central Middlesex we are convinced that soon, not only Middlesex, but the whole of London, will have its societies. Help that movement on its way, we ask; it will help The Law Society in Chancery Lane to speak for us with an even stronger voice, and the profession will have then made another step in regaining its old importance both nationally and in the localities. W. G.

"THE MOST IMPORTANT LAW SOCIETY"

A PERFECT May evening at the summit of Harrow Hill—no more idyllic setting could be found for the casting-off of professional cares when the members of the Central Middlesex Law Society were entertained by the Editor and Proprietors of THE SOLICITORS' JOURNAL on 14th May at a cocktail party held at the sixteenth century King's Head Hotel, Harrow. The officers and members of this young and lusty addition to the ranks of the local law societies were present in force and among other guests were Sir Sydney Littlewood (Vice-President of The Law Society), Mr. H. Horsfall Turner (Under-Secretary, The Law Society) and Mr. H. M. Lloyd (Under-Secretary, The Law Society).

Proposing the toast of the Central Middlesex Law Society, Mr. P. ASTERLEY JONES (Editor of THE SOLICITORS' JOURNAL) congratulated the members on their enterprise in getting together. He thought that as a profession we did not get together nearly enough, and he spoke of the benefits closer association among solicitors can bring at a time when encroachments by other professions tended to sap self-confidence. Moreover, solicitors were playing a very important part in the social development of this country under the leadership of the Council of The Law Society and local societies formed an important link in this process. He wished the new society prosperity, increased membership and a long life.

Sir SYDNEY LITTLEWOOD, supporting the toast, said that he would first like to congratulate the Central Middlesex Law Society and THE SOLICITORS' JOURNAL upon the organisation of this party. He thought it was a splendid thing. He shared Mr. Asterley-Jones' view about the importance of local law societies in general. He himself had a great deal to do with them, but this was the most important law society with which he had had anything to do. To many of them that must sound an over-statement, a gross over-statement, but it was not. This was the first society to be formed in the Greater London area and in the Greater London area there were 8,000 out of the 18,000 practising solicitors. The other 10,000, through their local law societies, were in very close touch with the Council of The Law Society. Mr. Asterley Jones had been very kind in his reference to the Council. They (the Council) did try to look ahead and to help their members and to help the public, and they knew from their experience of provincial law societies that through their contact with the Council those members were the better solicitors. Until now they had had no way of establishing that close contact with any practising solicitors in London; and Central Middlesex had done a very great thing in getting this law society going. He hoped to see law societies springing up throughout the county.

This week he had visited a local law society—at Tunbridge Wells to be exact—and talked to them for about an hour and a half about Sched. II. That was one example of what can be done by a law society. Central Middlesex had raised the banner in Greater London and he hoped that he would live to see the day when the whole of London was covered by local law societies. It would be a very fine thing indeed for everyone. Members of the new society, before they had been established very long, would find that they knew much more of what was going on than they had ever known before. He was sure they would have their difficulties, but they would also find it was worth while. On behalf of the Council of The Law Society as well as on his own behalf, he wished them well.

Mr. R. C. GARROD (President, Central Middlesex Law Society), responding briefly, referred to the part played by the enthusiasm of Mr. W. Gillham (Hon. Secretary) in the formation of the society. They had started with 100 members and already the number had grown to 150. He himself had attended a recent conference of officers of law societies promoted by The Law Society and had found it a most interesting and beneficial experience. He felt that at least he could say that the Central Middlesex Law Society had made a good start.

REVIEWS

British Legal Papers presented to the Fifth International Congress on Comparative Law, Palace of Justice, Brussels, 4th–9th August, 1958. General Editor, Dr. A. K. R. KIRALFY. pp. ix and 389. 1959. Distributed by Stevens & Sons, Ltd., London. Sole North American Distributors: Oceana Publications Inc., New York City. £3 3s. net.

This work presents in book form most of the national reports of the United Kingdom which were presented to the Fifth Congress of the International Academy of Comparative Law by many distinguished lawyers from these shores. The reports are published because it was felt that many lawyers who were unable to attend the Congress would find it interesting to read them; their publication is justified on this ground.

Although the papers cover a wide field, ranging from legal history to legal philosophy, and from nuclear energy and insurance law to the institutionalisation of political parties, they are not confined to the law of the United Kingdom. Statutory amendments of the personal law of Hindus since Indian independence are reviewed and there is a paper which takes the form of a consideration of the problems of private and collective property among primitive peoples. The scope of this contribution is confined to the African continent and to the customary laws of the indigenous negro peoples who live there.

A paper entitled "The Doctrine of Liability Without Fault" contains a very useful discussion of several important aspects of the law of tort and it is interesting to note that the suggestion that, in an action for trespass to the person, the plaintiff is required to show negligence or intention, has since received support from the judgment of Diplock, J., in *Fowler* v. *Lanning* [1959] 3 W.L.R. 241; p. 157, *ante*.

In addition to a paper examining the law of absolute ownership and division of ownership, Professor F. H. Lawson has contributed an obituary notice of the late Professor R. W. Lee, the expert on Roman and Roman-Dutch law.

The County Court Practice, 1959. By His Honour Judge Sir EDGAR DALE, R. C. L. GREGORY, LL.B., of Gray's Inn, Barrister-at-Law, and Mr. Registrar DOUGLAS FEARN. 1959. pp. ccxlv and (with Index) 2,157. London: Butterworth & Co. (Publishers), Ltd. £4 7s. 6d.

Since last year's edition of this useful work—indispensable for county court practitioners—the principal changes have been made by the County Court (Amendment) Rules, 1958, and by two orders amending the County Court Fees Order, 1949. In Pt. 2 of the book several new Acts have been incorporated, *viz.*, the Housing (Financial Provisions) Act, 1958, Matrimonial Causes (Property and Maintenance) Act, 1958, and the Maintenance Orders Act, 1958.

The Conveyancer and Property Lawyer, 1958. By EDWARD F. GEORGE, LL.B., Solicitor of the Supreme Court, and ERNEST H. SCAMELL, LL.M., Barrister-at-Law. Volume 22. pp. xvi and (with Index) 805. London: Sweet & Maxwell, Ltd. £2 10s.

The usual wealth of articles on what must surely be the most intricate of all subjects in the English law are included in this year's edition. Notes of cases of interesting decisions during 1958 are to be found under five main heads, *viz.*, Real Property,

Trusts, Wills, Landlord and Tenant, and Revenue. Pages 651 to 794 are devoted to a useful collection of precedents dealing with such diverse topics as advancement, companies, leases, settlements and wills.

Stone's Justices' Manual, 1959. Ninety-first Edition. Edited by JAMES WHITESIDE, O.B.E., Solicitor, Clerk to the Justices for the City and County of the City of Exeter, and J. P. WILSON, Solicitor, Clerk to the Justices for the County Borough of Sunderland. In two volumes. Volume 1, pp. cccxxvi and (with Index) 1,598. Volume 2, pp. vli and (with Index) 1,969. 1959. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. Thin edition: £4 17s. 6d. net. Thick edition: £4 12s. 6d. net.

This edition brings up to date statute law and case law affecting magistrates' courts. Perhaps the most noteworthy accretion to this year's Stone is the Maintenance Orders Act, 1958, but quite a large number of other Statutes and of new decisions have been assimilated.

Annotations to Acts, 1958. Directions for noting the amendments to earlier Acts made by the Acts, Statutory Instruments and Church Assembly Measures of 1958. Prepared by the Statutory Publications Office by direction of the Statute Law Committee. pp. 143. London: H.M.S.O. £1.

This book summarises the effect of the year's legislation, direct and delegated, and sets it out in a form from which practitioners can note up their copies of the Statutes. Although primarily designed as an annotating supplement to the 3rd ed. of the official Statutes Revised, it can be adapted without difficulty to any set of Statutes.

S.I. Effects, 1958. A table recording the effect of Acts, Statutory Instruments, etc., on previous Statutory Rules and Orders, and Statutory Instruments, as at 31st December, 1958. pp. v and 359. London: H.M.S.O. 15s. 6d.

A reader interested only in certain parts of a long instrument can see from the entries in this book whether or not he need refer to any amending instruments. Amendments made by instruments before 31st December, 1948, the closing date for Statutory Rules and Orders and Statutory Instruments Revised (3rd ed.), are not shown. This edition is the last which will be cumulative for the ten-year period, 1949 to 1958.

Who's Who in Trade Agreements, 1958. pp. 124. London: Gordon Rayment & Co., Ltd.

This compact reference work is arranged in two sections: section one is an alphabetical name index of parties named in agreements together with the agreement file number. Section two is a list, in numerical order, of all agreements appearing in the public register, together with details of parties, commodities, expiry data, etc. The information contained in this book is kept up-to-date by a service of quarterly supplements available from the publishers at 5s. each.

BOOKS RECEIVED

Stephen's Commentaries on the Laws of England. Twenty-first Edition. Supplement, 1959. By L. CRISPIN WARMINGTON, Solicitor. pp. 143. 1959. London: Butterworth & Co. (Publishers), Ltd. 9s. net.

An Introduction to Criminal Law. Fourth Edition. By RUPERT CROSS, D.C.L., Solicitor, and P. ASTERLEY JONES, LL.B., Solicitor. pp. lxvi and (with Index) 507. 1959. London: Butterworth & Co. (Publishers), Ltd. £1 15s. net.

Lord Goddard. By ARTHUR SMITH. pp. ix and 208. 1959. London: Weidenfeld & Nicholson. £1 1s. net.

Gale on Easements. Thirteenth Edition. By MICHAEL BOWLES, of Lincoln's Inn, Barrister-at-Law. pp. li and (with Index) 426. 1959. London: Sweet & Maxwell, Ltd. £4 10s. net.

Prideaux's Forms and Precedents in Conveyancing. Twenty-fifth Edition, in three volumes. Volume 2. Edited by T. K. WIGAN, Barrister-at-Law, and I. M. PHILLIPS, Barrister-at-Law. pp. lxxii and (with Index) 1204. 1959. London: Stevens & Sons, Ltd., and The Solicitors' Law Stationery Society, Ltd. £6 6s. net.

Law of Property in Land. By the late H. GIBSON RIVINGTON, M.A. Oxon., Solicitor. Fifth Edition. By E. SWINFEN GREEN, of Lincoln's Inn, Barrister-at-Law, and R. A. DONELL, Solicitor (Honours). pp. xxvii and (with Index) 547. 1959. London: The Law Notes Lending Library, Ltd. £2 5s. net.

Advocacy at Petty Sessions. Second Edition. By B. FRASER HARRISON, Solicitor. pp. xi and (with Index) 122. 1959. London: Sweet & Maxwell, Ltd. 15s. net.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Dog Licences Bill [H.L.] [13th May.

To consolidate certain enactments and Orders in Council relating to the licensing of dogs kept in Great Britain.

Fatal Accidents Bill [H.C.] [12th May.

Fire Services Bill [H.L.] [13th May.

To amend the Fire Services Act, 1947, and make further provision as to the pensions of persons transferring to or from the fire service and as to members of fire brigades becoming temporary instructors in training establishments.

Legitimacy Bill [H.C.] [12th May.

Portsmouth Corporation Bill [H.C.] [12th May.

Read Second Time:—

Criminal Justice Administration (Amendment) Bill [H.C.] [12th May.

Hospital of St. Mary Magdalene and Other Charities (Newcastle upon Tyne) Charity Bill [H.C.] [12th May.

Hospital of St. Nicholas (Salisbury) Charity Bill [H.C.] [12th May.

Jesus Hospital (Rothwell) Charity Bill [H.C.] [12th May.

Metropolitan Magistrates' Courts Bill [H.L.] [12th May.

Poor's Coal Charity (Wavendon) Charity Bill [H.C.] [12th May.

Read Third Time:—

City of London (Various Powers) Bill [H.L.] [12th May.

Falmouth Docks Bill [H.L.] [12th May.

Housing (Underground Rooms) Bill [H.C.] [12th May.

Ministry of Housing and Local Government Provisional Order Confirmation (West Hertfordshire Main Drainage) Bill [H.C.] [13th May.

Police Federation Bill [H.C.] [12th May.

Restriction of Offensive Weapons Bill [H.L.] [12th May.

Small Lotteries and Gaming Act, 1956 (Amendment) Bill [H.C.] [12th May.

Supreme Court of Judicature (Amendment) Bill [H.C.] [12th May.

In Committee:—

Mock Auctions Bill [H.L.] [12th May.

Rating and Valuation Bill [H.C.] [12th May.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Cotton Industry Bill [H.C.] [13th May.

To enable schemes made with a view to eliminating excess capacity in the cotton industry to provide for paying compensation

for any such elimination and for raising the sums required for that and other purposes by levies on the industry; to enable the Board of Trade to make contributions towards any such compensation and to make grants for the re-equipment of the industry; and for purposes connected therewith.

Pensions (Increase) Bill [H.C.] [12th May.

To provide for increases of certain pensions.

Television (Limitation of Advertising) Bill [H.C.] [13th May.

To amend the Television Act, 1954, by prohibiting the broadcasting of advertisements for more than six minutes in any hour.

Read Second Time:—

Middlesex County Council Bill [H.L.] [11th May.

In Committee:—

Finance Bill [H.C.] [11th May.

B. QUESTIONS

JUVENILES (DETENTION)

Mr. R. A. BUTLER said that in 1958 the daily average number of boys sentenced to Borstal training and temporarily detained in prison was 360 and of girls nine. On 21st April, 1959, there were 290 boys and ten girls so detained. [11th May.

STATUTORY INSTRUMENTS

Administration of Children's Homes (Scotland) Regulations, 1959. (S.I. 1959 No. 834.) 6d.
Arsenic in Food Regulations, 1959. (S.I. 1959 No. 831.) 5d.
Blacksness (Scalloway) Pier Order, 1959. (S.I. 1959 No. 823.) 6d.
Boarding-out of Children (Scotland) Regulations, 1959. (S.I. 1959 No. 835.) 7d.
Eastern Valleys (Monmouthshire) Joint Sewerage Order, 1959. (S.I. 1959 No. 817.) 5d.
Gas (Stock) (Amendment) Regulations, 1959. (S.I. 1959 No. 807.) 5d.
Hill Cattle Subsidy Payment (Scotland) (Variation) Order, 1959. (S.I. 1959 No. 830.) 5d.
Hydrocarbon Oil Duties (Drawback) (No. 1) Order, 1959. (S.I. 1959 No. 836.) 4d.
Import Duty Drawbacks (No. 4) Order, 1959. (S.I. 1959 No. 837.) 5d.
London Traffic (Prescribed Routes) (Islington) Regulations, 1959. (S.I. 1959 No. 821.) 5d.
Purchase Tax (No. 2) Order, 1959. (S.I. 1959 No. 809.) 8d.
Stopping up of Highways Orders:—
City and County Borough of Bradford (No. 2). (S.I. 1959 No. 790.) 5d.
County of Durham (No. 4). (S.I. 1959 No. 791.) 5d.
County of Northumberland (No. 2). (S.I. 1959 No. 792.) 5d.
County Borough of Preston (No. 1). (S.I. 1959 No. 793.) 5d.
City and County Borough of Sheffield (No. 4). (S.I. 1959 No. 794.) 5d.
County of Warwick (No. 5). (S.I. 1959 No. 820.) 5d.

SELECTED APPOINTED DAYS

May

3rd Employment of Young Persons (Iron and Steel Industry) Regulations, 1959. (S.I. 1959 No. 756.)

11th Therapeutic Substances (Control of Sale and Supply) Regulations, 1959. (S.I. 1959 No. 732.)
Fabrics (Misdescription) Regulations, 1959. (S.I. 1959 No. 616.)

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Trust—VARIATION—CAPITAL TO BE MADE AVAILABLE TO LIFE-TENANT

Q. *A* by his will gave his residuary estate to his trustees upon trust for sale and upon trust to pay the income of the proceeds to his wife for life and after her death to his daughter *B* (for whom we act) for life and upon trust after the death of *B* for all her children who should attain the age of twenty-one years in equal shares. *A* died in 1919 and his widow died in 1922. *B* is now aged sixty-one and she has three children, all of whom are over twenty-one years of age; she has never had any other children. The value of the residuary estate is now about £2,000 and *B* wishes to know whether any arrangement could be made between her and her children so that the capital could be made available to her. It seems to us that, if the children were to assign their shares to *B* and if *B* were sole trustee, she could for all practical purposes treat the capital as her own, as having regard to her age it may be assumed that she will not have any more children. The present trustees are *B* and an elderly gentleman who wishes to retire from the trust.

A. (1) We see some difficulty in the retirement of the co-trustee. A trustee can retire by virtue of the Trustee Act, 1925, s. 40, only if two individuals are left to perform the trusts. We suggest a possible solution is to appoint one of *B's* children as a new trustee in his place. *B* and that child may then be prepared to make payments to *B*. It should be clear, however, that any change of trustees is not merely to enable a breach of trust; otherwise the retiring trustee may remain liable (*Head* v. *Gould* [1898] 2 Ch. 250; Emmet on Title, 14th ed., vol. 2, p. 511). (2) We do not think this is a case in which the court could give consent to a variation of the trusts so as to bind any unborn child by virtue of the Variation of Trusts Act, 1958, as variation would not benefit that child. See, for instance, the discussion in Emmet, *op. cit.*, p. 526, and in the supplement thereto. Having regard to the impossibility of *B* having more children and to the size of the estate, we think the parties might well be prepared to act on the assumption that all interests are vested. If *B* and one of her children became joint trustees we think the three children might well assign their shares to *B*, whereupon there would be no real risk in assigning assets to *B* or applying them for her sole benefit.

Law of Property Act, 1925—TRANSITIONAL PROVISIONS

Q. *A* owned Beachacre and in 1875 granted the same to a mortgagee by way of mortgage subject to a proviso for redemption. *A* died, without having redeemed the mortgage, in 1901, by his will appointing *B* and *C* his executors and devising his real and personal property to *B* and *D* absolutely. *B* and *C* proved the will. *B* died and under his will his wife *W* was entitled to his estate for life. *C* died and his will was proved by *X*, *Y* and *Z*. As at 31st December, 1925, subject to the mortgage, *D* was entitled to half the income and *W* for life to the other half, presumably the legal estate still being vested in *X*, *Y* and *Z*. By deed of appointment in 1933, *X*, *Y* and *Z* purported to appoint *L* and *M* as trustees of the will of *A* by virtue of the Trustee Act, 1925. Under the transitional provisions in whom did the legal estate vest on 1st January, 1926?

A. By virtue of the Law of Property Act, 1925, Sched. 1, Pt. VII, para. 1, the property vested in the mortgagee for a term of 3,000 years subject to the same right of redemption as existed immediately before 1926. And, by para. 3, the fee simple estate vested in the person who was at the same date entitled to have that estate conveyed to him on redemption of the mortgage. Hence, the legal estate vested in *X*, *Y* and *Z* subject to the mortgage term.

Holograph Will—Testatrix domiciled in Scotland—Confirmation of Scottish Executor—Resealing in England—Power of Executor to make Title to Land in England

Q. A testatrix, resident in England, made her will in Scotland, leaving all her property real and personal to her Scottish solicitor and appointing him sole executor. The will was a holograph will, i.e., in the handwriting of the testatrix, dated and signed by her, but not witnessed. The will recited that despite her residence in England the testatrix had not abandoned her Scottish domicile. The testatrix died last month, leaving money in the bank in Scotland, money in the Post Office Savings Bank and a freehold dwelling-house in England, where she had resided and died.

The Scottish solicitor wishes to get in all the estate of the deceased and in particular wishes to make title to the dwelling-house so that he can have it sold. The only known living relative of the deceased is an elderly cousin living in Scotland. The testatrix was a spinster. The Scottish solicitor has communicated with us in this matter, and we have advised him that he would have to obtain confirmation of executor in accordance with Scots law, and have same resealed in England. This would enable him to make title to the personal property of the deceased. We have also told him, however, that in our opinion he would not be able to obtain resealing of the confirmation in regard to the real property of the deceased in England as the will disposing of same did not comply with the provisions of the Wills Act, 1837, in that it had not been witnessed by two witnesses. We have further informed him that in our opinion the cousin of the deceased would have to make title by obtaining a grant of letters of administration in this country in respect of the dwelling-house, and that she could then dispose of the property for her own benefit thus defeating the wishes of the testatrix. Are our views correct ?

We have had a further communication from the Scottish solicitor in which he suggests that he obtain some form of authority or mandate from the deceased's cousin to complete title to the real property in accordance with the terms of the holograph will. He states that he can quite easily obtain such mandate. Do you consider that this suggestion is at all feasible ? Is there in fact any way in which a grant of letters of administration can be made to the Scottish solicitor in respect of the real property of the deceased ?

A. Apparently the deceased had personal estate in England. That being so the Scottish confirmation may be resealed here (Judicature Act, 1925, s. 168). The confirmation will then have the same effect as if it was a grant made by the High Court (*ibid.*). The executor would then have all the powers of an English executor including the power to make title to land (*Re Howden and Hyslop's Contract* [1928] Ch. 479). See also the explanation in Williams on Executors, 13th ed., vol. 1, p. 110. On these grounds we think that the Scottish executor can adequately carry out his proposal by obtaining resealing.

Contract—Variation of Terms of Lease

Q. A lease for seven years was entered into which contained covenants which set out the landlord and tenant's responsibility for repairs. Three years of the term now remain and it has been decided to vary slightly the landlord's responsibility for repairs. It is contended on the one hand that the alteration to the terms can be effected by a suitable exchange of correspondence. On the other hand, it is said that a variation of the terms of a lease by correspondence is not legally binding, and the only way to make the variation legally binding is to execute an endorsement on the lease. Is the latter view correct, or would variation evidenced by correspondence be enforceable between the parties having regard to the court's equitable jurisdiction ?

A. Two basic principles must be remembered. First, a contract required to be evidenced in writing can only be altered by an agreement which is evidenced in writing : *Morris* v. *Baron* [1918] A.C. 1. Secondly, a contract under seal may be altered by a later agreement not under seal : *Berry* v. *Berry* [1929] 2 K.B. 316. The terms of the lease, therefore, may be varied by agreement which is evidenced by correspondence. But for the variation to be effective there must be consideration ; to this requirement there is possibly some exception as a result of the " High Trees " line of cases : see *Central London Property Trust, Ltd.* v. *High Trees, Ltd.* [1947] K.B. 130 ; Halsbury. 3rd ed., vol. VIII, p. 113.

Caravan Site—Grounds for Planning Refusal

Q. We act for the owner of a site upon which there has been a term planning licence for a limited number of caravans. On expiry of this term our client applied for a renewal of the planning consent for the same permitted number of caravans. (1) The planning authority have refused consent, and the only ground of refusal given is breach of the condition limiting the number of caravans on the site. Whilst it is not stated in the planning authority's decision, it is understood that something like double the permitted number is alleged to have been on the site. The planning authority did not adopt enforcement procedure, although it is alleged the breach of condition existed for at least two seasons. Is a breach of condition by the developer a good ground for refusal of planning consent, and can you refer us to any decisions which would help ? (2) There is some evidence that the site was used for caravans prior to 1st July, 1948, but it is likely the evidence will show a considerably less number of caravans were stationed on the site than that now desired. Can you refer us to any decisions on the interpretation of the word " material " in the sentence " The making of any material change in the use of any building or other land," in s. 12 (2) of the Town and Country Planning Act, 1947 ? For example, would a change from twenty caravans to thirty caravans be a material change ?

A. (1) We hardly think that the breach of condition by itself would be regarded by the Minister of Housing and Local Government on appeal from the decision of the local planning authority as sufficient reason for the refusal of a limited period permission for the number of caravans specified in the expired permission. The failure to state any other reason seems to imply that the site is satisfactory for this number. We know of no relevant decisions. (2) There are two decisions of the High Court, neither of which is entirely satisfactory, on the point raised, namely, *Brookes* v. *Flintshire County Council* (1956), 6 P. & C.R. 140, discussed at 100 Sol. J. 626 and 643, and *Taylor* v. *Eton R.D.C.* (1957), 170 E.G. 74, mentioned at 101 Sol. J. 703. In both cases the number of caravans had substantially increased since 1st July, 1948, over the number on the site before that date. In the first case the Divisional Court, in effect, expunged from the relevant enforcement notice the particular area of the field on which caravans were sited before 1st July, 1948, without imposing a numerical limitation, leaving the notice to take effect for the remainder of the field on to which caravans had spread since that date ; in the second case they amended the notice to require the removal of all caravans on the site (there were twenty at the date of the notice) in excess of three, this being the number on the site before 1st July, 1948. We find it difficult to say what would be the effect of an increase from twenty to thirty without knowing further facts about the site, more particularly the geographical distribution of the vans on the site, but such an increase seems to us to be very much of a borderline case, in which the court might have some difficulty in making any apportionment.

Riparian Rights over Stream Acting as Boundary

Q. The freehold property of *A* is bounded on one side by a running stream. The plan on the conveyance to *A* shows the boundary to exclude any part of the bed of the stream and the parcels describe the property as being bounded on that side by " other land and a stream of the vendors." The adjoining owner claims that the bed of the stream is included in his conveyance and he proposes to divert the course of the stream. *A* wishes the stream to be retained as his boundary and objects to its being diverted. (*a*) Is the form of *A's* conveyance sufficient to rebut the presumption (referred to in the cases of *Pryer* v. *Peter* [1894] Ch. 11 and *Mappin Bros.* v. *Liberty Co.* [1903] 1 Ch. 118) that such a conveyance includes the bed of the stream up to the centre thereof, and (*b*) If so, has *A* any riparian rights over the waters of the stream by which he can effectively prevent its diversion beyond his boundary ?

A. (*a*) We consider that the presumption does not arise in this case because the conveyance describes the stream as belonging to the vendors. Compare, for instance, the judgment in *Mappin Bros.* v. *Liberty & Co., Ltd.* [1903] 1 Ch. 118. (*b*) Nevertheless, *A* is a riparian owner and so he has, as a natural incident of his ownership, the right to continued flow of water (*John Young* v. *Bankier Distillery Co.* [1893] A.C. 691). For example, he may take water for domestic purposes. Consequently, we think he can prevent any diversion which would deprive him of his rights.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

HUSBAND AND WIFE: VARIATION OF SETTLEMENT: HOUSE CONVEYED TO PARTIES AS JOINT TENANTS

Brown *v.* Brown

Hodson, Sellers and Willmer, L.JJ. 20th April, 1959

Appeal from Judge Shepherd, Q.C., sitting as special commissioner.

In October, 1952, a husband and wife purchased in fee simple a parcel of land and a house thereon. Clause 2 of the conveyance provided: " (*a*) The purchasers shall hold the said property upon trust to sell the same with power to postpone the sale thereof and shall hold the net proceeds of sale and other moneys applicable as capital and the net rents and profits thereof until sale upon trust for themselves as joint tenants. (*b*) Until the expiration of twenty-one years from the death of the last survivor of the purchasers the trustees for the time being of this deed shall have power to mortgage, charge, lease or otherwise dispose of all or any part of the said property with all the powers in that behalf of an absolute owner." Part of the purchase price had been met by mortgage to a building society and by a loan, and both husband and wife had contributed towards repayment of the debt. In 1957 the wife was granted a divorce, and in December, 1958, she applied by summons to the commissioner, under s. 25 of the Matrimonial Causes Act, 1950, for an order varying the settlement comprised in the conveyance " by extinguishing the rights and interest and powers of the respondent husband absolutely as if he were now dead." The judge made no order, and the wife appealed, it being submitted that the conveyance was a post-nuptial settlement.

HODSON, L.J., delivering the judgment of the court, said that without resorting to the liberal construction of the word " settlement," which had been so much discussed in the authorities, it was, in the judgment of the court, right to regard the conveyance here in question as a settlement by the parties upon themselves as trustees which by its terms created legal and beneficial interests such as to give it the attributes of a settlement. Counsel for the wife contended that the fact that the mortgage payments were still continuing, and that various outgoings on the house had to be periodically met, gave the conveyance the attributes of a settlement within the liberal construction of s. 25, but that argument was rejected seeing that none of these payments had to be made by virtue of the conveyance. The mortgage payments, which were the payments principally relied on, were made, not under the conveyance, but under a separate instrument imposing obligations on the parties *vis-à-vis* the mortgagee. The appeal would be allowed.

APPEARANCES: *G. D. Petherick* (*Corbin, Greener & Cook* for *Jewill, Hill & Bennett*, Penzance).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[2 W.L.R. 776**

Queen's Bench Division

TOWN AND COUNTRY PLANNING: ENFORCEMENT NOTICE: WHETHER PERMISSION GRANTED

Cater *v.* Essex County Council

Lord Parker, C.J., Donovan and Salmon, JJ.

14th April, 1959

Case stated.

The appellant was the owner of land which, prior to 1954, was used as a smallholding. In 1954, he allowed caravans to park on the land. Planning permission for a caravan site having been refused and an appeal to the Minister dismissed, the local planning authority on 12th December, 1956, served an enforcement notice on the appellant which recited that " whereas . . . development consisting of a material change of use has been carried out . . . without the grant of permission required in that behalf under Pt. III of [the Town and Country Planning Act, 1947], the said land being used for the purpose of a caravan site," and required the appellant within three months " to discontinue the use of the said land comprising the said development and to restore the said land to its condition before the development took place." In a letter of the same date the local planning authority undertook not to prosecute if the appellant took steps to reduce the number of caravans and, ultimately, within three years to discontinue the use. The number of caravans on the land was not reduced and finally the local planning authority charged the appellant with using the land for the purpose of a caravan site, in contravention of an enforcement notice which required such use to be discontinued. The justices found the offence proved. The appellant appealed on the ground, *inter alia*, that the Town and Country Planning General Development Order, 1950, by Sched. I, Class IV, para. 2, permitted " The use of land . . . for any purpose on not more than twenty-eight days in total in any calendar year, and the erection or placing of movable structures on the land for the purposes of that use," and therefore that the enforcement notice was a nullity.

LORD PARKER, C.J., said that it seemed clear that, in a case where the General Development Order, 1950, applied, there had been a grant of permission required in that behalf under Pt. III of the Town and Country Planning Act, 1947, and if that were right the recital in the enforcement notice was not true in fact. Its basis was inaccurate and, on the authority of *Francis* v. *Yiewsley and West Drayton Urban District Council* [1958] 1 Q.B 478, the enforcement notice was a nullity. Appeal allowed.

DONOVAN and SALMON, JJ., agreed.

APPEARANCES: *R. E. Megarry*, Q.C., and *R. Higgins* (*James & Charles Dodd*); *F. H. Lawton*, Q.C., and *John Marriage* (*Sharpe, Pritchard & Co.*, for *The Solicitor*, Essex County Council).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] **[2 W.L.R. 739**

PRIVATE STREET WORKS: ABANDONMENT OF RESOLUTION TO MAKE UP ROAD: WHETHER LOCAL AUTHORITY PRECLUDED FROM MAKING FRESH RESOLUTION TO MAKE UP ROAD

R. & T. Glynn Evans and Others *v.* Liverpool Corporation

Lord Parker, C.J., Donovan and Salmon, JJ.

23rd April, 1959

Case stated by the Liverpool stipendiary magistrate.

In September, 1931, an urban authority resolved, pursuant to s. 6 of the Private Street Works Act, 1892, to make up a road. The formalities required in connection with publication of the resolution were complied with, and within the prescribed period objections were lodged on behalf of most of the frontagers. The authority took no steps to have those objections determined by a court of summary jurisdiction nor did they proceed with their proposal to make up the road. In April, 1948, the authority again resolved, pursuant to s. 6, to make up the same road, the resolution containing no reference to the resolution of 1931. The resolution was duly published and within the prescribed period objections were lodged by certain of the frontagers. No steps were taken to have these objections determined, but on 2nd January, 1952, the authority resolved, pursuant to s. 11 of the Act, to amend the estimate and the provisional apportionment of the probable expense of making up the road. Objections were lodged by a number of frontagers, which objections the authority sought to have determined by a court of summary jurisdiction on 9th May, 1958. At the hearing of the application the frontagers contended, *inter alia*, that in the circumstances the authority must be deemed to have abandoned the resolution of 1931 and could no longer seek to apportion the expense of the works amongst the frontagers; alternatively, that the resolution of 1931 was still in being and that, therefore, the resolutions of 1948 and 1952 were null and void. The magistrate considered that those resolutions were valid and dismissed the objections. The frontagers appealed.

SALMON, J., giving the first judgment, said that it was a startling proposition that a local authority which abandoned a

resolution to make up a road forever lost its power in the future to resolve under the Act to make up the road. Section 6 by its express words gave a power to an urban authority which it might exercise from " time to time," and the Act contemplated that it should exercise its powers under the Act whenever public safety or convenience demanded that a road be made up. The argument for the frontagers seemed contrary to the words of the statute, and his lordship would be reluctant to give effect to it unless compelled to do so by plain authority; there was no such authority and that point failed. The next point, that the 1931 resolution was still in being and that the corporation should have proceeded by way of amendment and not *de novo*, turned on whether or not there was an abandonment. The argument that once a resolution had been objected to, there was an obligation under s. 8 to have the objection determined, involved a misconception. All that that section laid down was that objections must be determined before the expense of making up a road could be recovered from the frontagers (see *Faulkner* v. *Hythe Corporation* [1927] 1 K.B. 532). In his lordship's view it was impossible to regard anything done by a local authority as putting it out of its power in the future to exercise the powers conferred upon it by the Act, and, on the facts, it was impossible to come to any conclusion other than that the 1931 resolution had been abandoned. Reliance had been placed upon *obiter dicta* of Mathew, L.J., in *Southampton Corporation* v. *Lord* (1903), 67 J.P. 189, 191, as saying that if a scheme could be abandoned at all, it could only be abandoned by express notice. His lordship did not so read the passage; that point had been left open by the Court of Appeal and the view of Wright, J., at first instance, was inimical to the frontagers' contention.

LORD PARKER, C.J., and DONOVAN, J., agreed. Appeal dismissed.

APPEARANCES: *Andrew Rankin* (*Purchase, Clark & Treadwell*, for *Rollo & Mills-Roberts*, Liverpool); *David McNeill* (*Cree, Godfrey & Wood*, for *T. Alker, Town Clerk*, Liverpool).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [2 W.L.R. 749

SHIPPING: LIMITATION OF LIABILITY: WHETHER STEVEDORES ENTITLED TO LIMIT LIABILITY FOR NEGLIGENCE

Midland Silicones, Ltd. *v.* Scruttons, Ltd.

Diplock, J. 28th April, 1959

Action.

By a bill of lading, which incorporated the United States Carriage of Goods by Sea Act, 1936, and limited to $500 per package the liability of the carrier in the event of loss, damage or delay, a drum containing chemicals was shipped from America to London. The defendants, who were stevedores engaged by the carrier, while lowering the drum from an upper floor of a dock transit shed on to a lorry, negligently dropped and damaged the drum when delivering it to the consignees in accordance with the bill of lading, causing some of its contents (worth £593) to be lost. The consignees sued the stevedores in tort claiming £593. The stevedores, relying on the bill of lading, claimed that their liability was limited to $500.

DIPLOCK, J., holding that the bill of lading on its true construction did not purport, by any express words, to govern relations between shipper or consignee and any stevedores engaged by the carrier, said that the limitation of liability on which the stevedores sought to rely was thus contained, and contained only, in a contract which they did not execute and which did not purport expressly to be made on their behalf. One started, therefore, with two principles which were described by Lord Haldane in *Dunlop Pneumatic Tyre Co., Ltd.* v. *Selfridge and Co., Ltd.* [1915] A.C. 847, 853, as fundamental in the law of England. " One is that only a person who is a party to a contract can sue on it. Our law knows nothing of a *jus quaesitum tertio* arising by way of contract. Such a right may be conferred by way of property, as, for example, under a trust, but it cannot be conferred on a stranger to a contract as a right to enforce the contract *in personam*. A second principle is that if a person with whom a contract not under seal has been made is to be able to enforce it, consideration must have been given by him to the promisor or to some other person at the promisor's request." The present case was governed by those simple, fundamental, though no doubt old-fashioned, principles laid down by Lord Haldane and approved by the House of Lords, and the defendants could not limit their liability to the plaintiffs in tort by relying on a contract between the plaintiffs and a third party to which they were not parties, and for which they gave no consideration to the plaintiffs. If in so deciding his lordship was differing from the views expressed *obiter* by such distinguished lawyers as Scrutton and Denning, L.JJ., he was fortified by the knowledge that a similar conclusion had been reached by the High Court of Australia and the Supreme Court of the United States. There would be judgment for the plaintiffs.

APPEARANCES: *A. A. Mocatta*, Q.C., and *Michael Kerr* (*Ince & Co.*); *Eustace Roskill*, Q.C., and *R. P. Colinvaux* (*Hill, Dickinson & Co.*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [2 W.L.R. 761

NOTES AND NEWS

COLONIAL APPOINTMENTS

The following promotions and appointments are announced in the Colonial Legal Service: Mr. W. A. BLAIR-KERR, Senior Crown Counsel, Hong Kong, to be District Judge, Hong Kong; Mr. H. L. DA COSTA, Assistant Attorney-General, Jamaica, to be Federal Attorney-General, The West Indies; Mr. A. M. EDUN, Crown Counsel, British Guiana, to be Resident Magistrate, Jamaica; Mr. P. M. HITCHIN, Registrar-General, Nyasaland, to be Administrator General, Uganda; Mr. W. J. LEWIS, Deputy Commissioner of Income Tax, Federation of Nigeria, to be Deputy Chairman, Federal Board of Inland Revenue, Federation of Nigeria; Mr. E. A. OSINDERO, Senior Assistant Commissioner of Income Tax, Federation of Nigeria, to be Chief Inspector of Taxes, Federation of Nigeria; Mr. J. QUINN to be Assessor, Income Tax, East Africa High Commission; Mr. E. W. TAYLOR to be Legal Draftsman, Seychelles; and Mr. C. WYLIE, Federal Attorney-General, The West Indies, to be Federal Justice, The West Indies.

PENSIONS (INCREASE) BILL

The latest Pensions (Increase) Bill was read for the first time in the House of Commons on 12th May. The purpose of the Pensions (Increase) Acts is to increase the pensions of retired public servants (including the pensions of their widows and dependants) the value of which have fallen as a result of cost of living increases. They in no way alter the basic pension schemes which form part of the conditions of service of those still working. Generally speaking, to receive an increase a pensioner must be aged at least sixty, unless he retires on grounds of ill-health or has become unable to work since retirement. There are, however, special rules for widows. There are no means tests. The total cost of the proposals in the Bill (excluding the parallel increases for Forces pensioners under Prerogative Instrument) will be about £8½m. a year initially, of which a little over £6m. will fall on the Exchequer and the remainder on the rates. The parallel increases for Forces pensioners will cost initially about £2½m. a year. Examples of pensions increase in the civil service after forty years' service are set out below:—

Year of retirement	1939–40	1946–47	1951–52	1956–57	1957–58
Executive Officer	£ *p.a.*				
Pension as awarded	257·5	288·5	327	414	447
Pension + present increase	369	377·5	366	414	447
Pension + proposed increase	413	423	410	422	
Principal	£ *p.a.*				
Pension as awarded	550	568	639	797·5	861
Pension + present increase	691	693	709	797·5	861
Pension + proposed increase	774	776	794	813·5	861

LOCAL LAW SOCIETIES' NEWS

THE BIRMINGHAM LAW SOCIETY held its 140th Annual General Meeting on 25th March. The following were elected for the following year: Mr. J. Kenneth Walker, president; Mr. R. S. King-Farlow, vice-president; Mr. David C. Stevens and Mr. M. P. C. Hayes, joint hon. secretaries and treasurers.

THE HEREFORDSHIRE, BRECONSHIRE AND RADNORSHIRE INCORPORATED LAW SOCIETY held its Annual General Meeting on 11th March. The following officers were elected for the following year: Mr. D. B. W. Dykes, president; Mr. H. G. Cullis, vice-president; Mr. F. Craze, re-elected hon. secretary and hon. treasurer; and Mr. E. K. W. Matthews was re-elected hon. librarian.

THE HERTFORDSHIRE LAW SOCIETY does not enjoy the advantage of having its own headquarters and library where members may meet, but it is endeavouring to build up an annual programme of activities which will bring the solicitors of the county of Hertfordshire into personal contact with each other as much as possible. The Society has already over 240 members, which is very nearly 100 per cent. membership in the county. Prior to the war the only regular activity was an annual dinner, together with quarterly committee meetings at which communications from The Law Society were dealt with. After the war the dinner, which had always been a full dress occasion at a London hotel, was switched into an informal lunch held at one or other of the main towns of the county. This greatly increased the attendance of members and guests, and the Society now has to face the problem that there is no building in the county large enough for all those who would like to attend the annual lunch, and accordingly numbers have to be restricted.

Recruiting

The next addition was the recruiting of a delegation to attend The Law Society's Annual Conference. This delegation grew to a total of more than a dozen (with wives in addition), but has latterly diminished a little in number which is said to be due to a feeling that the Conference is not sufficiently instructive for the ardent minds of Hertfordshire. The secretary alone among the members of the Society is entitled to wear a medal for the original Battle of Brighton in 1948 together with all ten clasps.

The next addition was an annual golf day. This consists of both morning and afternoon competitions and a number of non-players have got into the habit of attending the midday lunch. Last year there were more than thirty people at lunch and about twenty playing in the competitions. The Society is fortunate in having in Mr. Robert Sherrard, of St. Albans, a short handicap solicitor who is also a highly efficient organiser.

Weekend Study Course

More recently came the very successful experiment of running a weekend study course at an Oxford College. This was an independent venture organised by Hertfordshire but invitations were sent to a number of other provincial societies and several members of Cambridgeshire, Bedfordshire, and Berks, Bucks and Oxon Law Societies joined in. The course lasted 2½ days and cost (officially) £4 a head, out of which the Society even made a small profit. The Society have also taken up the invitation of the secretary of The Law Society to send officials to meetings of provincial societies to join in discussions or to lecture. In fact, Hertfordshire can claim to have anticipated the secretary's invitation because they had already organised such an occasion before the invitation came. Mr. Horsfall Turner will be lecturing on "The Structure of Costs" on 22nd May, and it is a noteworthy fact that approximately one-third of the practising solicitors in Hertfordshire have already put their names down for this lecture. The lecture is to be followed by an informal supper.

Seventy-fifth Anniversary

The Society's biggest function was held on 25th April, 1958, when to celebrate its seventy-fifth anniversary, it borrowed one of the stately homes of England and gave a party to more than 400 people including a boar's head supper and a firework display which did better than expected by starting a fire which had to be attended by the fire brigade. The party, which cost a little short of £1,000, was entirely paid for out of the sale of tickets and current revenue. Many members (and particularly guests) have demanded a repetition, but on a subscription of only a guinea, it takes a little time to put the money by.

THE MID-ESSEX LAW SOCIETY held its Annual Dinner at the Masonic Hall, Hutton, Essex, on 10th April, when the president, Mr. F. N. Wingent, of Chelmsford, welcomed 121 members and their guests. Amongst those present were the Lord Lieutenant of Essex, the High Sheriff of Essex, Judge J. Bassett and Judge Connolly Gage, Mr. Desmond Heap representing the Council of The Law Society, the Archdeacon of Southend, and the presidents of the Southend-on-Sea and District Law Society and the West Essex Law Society.

CASES REPORTED IN VOL. 103

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"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £4 10s., Overseas £5 (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received by first post Wednesday.

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